STATUS OF CONTINUING DISABILITY REVIEWS: SOCIAL SECURITY DISABILITY CUTOFFS CONTROVERSY

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY

OF THE

COMMITTEE ON WAYS AND MEANS

AND THE

SUBCOMMITTEE ON HEALTH AND LONG-TERM CARE

OF THE

SELECT COMMITTEE ON AGING

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SOCIAL SECURITY DISABILITY CUTOFFS CONTROVERSY

MONDAY, APRIL 30, 1984

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON SOCIAL SECURITY, COMMITTEE ON WAYS AND MEANS, AND SUBCOMMITTEE ON HEALTH AND LONG-TERM CARE, SELECT COMMITTEE ON AGING,

Miami, FL.

The subcommittees met at 9:05 a.m., pursuant to notice, in the Dade County Courthouse, Miami, FL, Hon. J.J. Pickle (chairman of the Subcommittee on Social Security) and Hon. Claude Pepper (chairman of the Subcommittee on Health and Long-Term Care) presiding.

[The press release announcing the hearing follows:]

[Press release No. 8, Tuesday, April 24, 1984]

HON. J.J. PICKLE (D., TEX.), CHAIRMAN, SUBCOMMITTEE ON SOCIAL SECURITY, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES A FIELD HEARING ON THE STATUS OF CONTINUING DISABILITY REVIEWS

The Honorable J.J. Pickle (D., Tex.), Chairman of the Subcommittee on Social Security of the Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee will hold a hearing to examine the present status of the social security disability review process. The hearing is to be held in the Commission Chambers, Room 240, of the Dade County Courthouse, 73 West Flagler Street, Miami, Florida, on Monday, April 30, beginning at 9:00 a.m. This hearing will be held jointly with the Subcommittee on Health and Long-Term Care of the Select Committee on Aging chaired by the Honorable Claude Pepper.

The hearing will focus on four main concerns: first, the effect of the present procedures on disability recipients; second, the growing pressure on the states to implement their own administrative procedures for this program in defiance of federal policy guidelines; third, the inadequacy of administrative initiatives to resolve this crisis; and fourth, the critical importance of immediate legislative attention.

The Subcommittee expects to take testimony from invited witnesses including beneficiaries, state officials, and representatives from the Department of Health and Human Services.

In announcing the hearing, Chairman Pickle noted:

"It is critical that the disability program be properly administered since it provides the primary source of income for the majority of over 6 million physically or mentally disabled Americans.

"During the past three years, over one million disabled workers have had their continuing eligibility reviewed and 45 percent of them have been told they are no longer eligible for benefits. However, this determination has often been made erroneously. Nearly two-thirds of those who appeal these terminations have their benefits restored after enduring a lengthy appeals process. This process of review, benefit disruption, and legal review represents a serious emotional and physical threat to millions of disabled Americans and their families.

"As a result of the CDR procedures used, the whole social security disability program has been plunged into administrative chaos. In twenty states, the federal courts have intervened and substituted a court ordered standard of review for that called for by the Social Security Administration. In nine other states, the governors

have declared a self-imposed moratorium on processing disability reviews. This combination of federally court ordered and state imposed actions has effectively brought to a halt the uniform national system of disability insurance under social security.

"The human costs of the current crisis," said Mr. Pickle, "are incalculable. The purpose of these hearings is to demonstrate beyond doubt the folly of the Administration's reluctance to support the kind of legislative solution my Subcommittee has developed and the Committee on Ways and Means approved without opposition."

WRITTEN COMMENTS IN LIEU OF PERSONAL APPEARANCE

For those who wish to file a written statement for the printed record of the hearing, six copies are required and may be submitted by the close of business Friday, May 11, 1984, to John J. Salmon, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Room 1102, Longworth House Office Building, Washington, D.C. 20515.

Chairman PICKLE. I will ask the committee to come to order. This is a joint hearing this morning by the Subcommittee on Social Security of the House of Representatives, and the Subcommittee on Health and Long-Term Care of the Select Committee on Aging, which is chaired by the distinguished gentleman from Florida, Mr. Pepper.

My name is J.J. Pickle. I am from Austin, TX. I chair the Social Security Subcommittee. I now will introduce the gentleman to my left. Both his voice and his face have been symbolic of the leadership of the finest causes in America now for some 50 years. [Applause.]

Normally the Chair would ask that the audience not respond by applause or any other outward display, but in the case of Senator Pepper, that is acceptable this one time, because we do feel very keenly that the gentleman from Florida has given us strong leadership in caring for the rights of our elderly in both Social Security and now in the disability field.

We have been holding these hearings across the land for the last 2 or 3 months. We have held joint hearings in Chicago, IL, Dallas, TX, in Boston, MA, Atlanta, GA, Hot Springs, AR, and now here in Miami. We are holding these hearings so that people can understand firsthand some of the problems we face on the question of disability legislation, and the crises that people who are receiving disability benefits face, and the relief they need. We are holding the hearings so that you might understand a little more about legislation pending that might be of relief.

I hate to say that we found these hearings necessary. There ought not to be any reason why we should be doing this. We should have passed legislation long since, but I am pleased to say that the administration appears to be changing their position in this regard.

Up to this point the administration has refused to support legislation that will bring about more fairness in the reviews of these disability cases. On April 12 the leaders in the Senate did agree that they would act on a disability bill in the next few weeks. Following this agreement, Secretary Heckler ordered a suspension of the disability review process until new disability legislation is enacted. In addition, she said that she would be working with the House and the Senate in finding a proper agreement in passing a bill.

I am glad that the administration, and I am glad that the Senate, have now agreed to support a legislative remedy to the

crisis that we are facing. But while they have agreed to support legislation, and have invoked a temporary moratorium on the review of all these cases, the important thing we must keep in mind is that legislation must be passed. The Congress has focused on the disability program several times over the past 6 years to ensure that all those who are entitled can receive these benefits and can receive them in an orderly fashion.

In 1980 our concern led us to enact a requirement that Social Security reexamine all beneficiaries periodically, that is, once every 3 years, to determine if they are still eligible for benefits. That is fair and that is reasonable. It is a good legislative process, and these reviews are underway.

The difficulty we found was, though, that in starting the reviews, the administration moved them up about 8 months too soon, and immediately began to knock people off the disability rolls. The staffs at the local and State levels were not able to handle it. They were not equipped, they were not trained, and as a result thousands upon thousands of people across this land have been knocked off the rolls, left without any benefits. Now we have saved some money for the Social Security trust fund but we also caused great, great damage to the lives of many, many individuals.

Now we have legislation pending, which we will go into this morning, in an effort to try to pass legislation that will give relief to these people. We are going to proceed now with our statements.

I am going to recognize the gentleman from Florida, but, before I do, I want to read you, and I want to put in the record in its entirety, Mr. Pepper, a statement that appeared in the Washington Post this Saturday. I think it is worth reading so you can get the picture of where we are. You see, the difficulty that arises is this, at this time we have removed people from the rolls in State after State, and there is such variance that nobody knows what the law is.

For instance, over 500,000 people have been removed from the rolls. Half of those have appealed and have been reinstated. In over 29 instances, States have either taken themselves out, by order of the Governor, of the disability review program, or else the Federal court has said to the Social Security Administration, "You are in error, and we therefore rule that you must pay these benefits."

Now, the Social Security disability program is in absolute chaos throughout the land. Many cases have been filed individually. A class-action case was filed recently, and the court decided on it this Saturday. I want to read now and put in the record this statement, because I think it is indicative of the situation we face, Senator.

I am reading from the Washington Post of Saturday, the 28th:

A federal judge, saying that Social Security is in a "state of lawlessness," yesterday ordered the government to restore benefits to an estimated 8,000 recipients in seven midwestern states.

U.S. District Court Judge Miles Lord issued his preliminary injunction in a class-action lawsuit filed by the Legal Aid Society in Minneapolis.

His ruling affects those whose benefits were terminated by the Health and Human Services Department and those whose applications for benefits were denied.

Earlier this month, HHS Secretary Margaret M. Heckler ordered a temporary halt to Social Security disability reviews, thereby preserving or restoring benefits to 40,000 people fighting cutoffs through administrative appeals.

But that action did not affect the nearly 36,000 people who filed suits pending in federal courts.

More than half the states, either under court order or on their own initiative, had stopped moving to remove people from the rolls under the rules set forth by the HHS.

At a hearing Thursday, Lord accused Heckler of making a "mess" out of Social Security.

"We're in a posture of delaying relief to people who may be starving to death," the judge said, citing government delays in obeying standards set out in court decisions.

"Let the person who made the mess live in it," Lord said, referring to Heckler. "It's hard for the secretary to claim duress when she was the one who created it."

I enclose that statement for the record to show that at the Federal level, judges are saying that the Social Security disability program is in complete chaos, and we must make some changes.

[Mr. Pickle's opening statement and article referred to follow:]

OPENING STATEMENT OF HON. J.J. PICKLE, CHAIRMAN, SUBCOMMITTEE ON SOCIAL SECURITY

Today, in conjunction with the Subcommittee on Health and Long-Term Care of the Select Committee on Aging chaired by my colleague, Senator Claude Pepper, the Subcommittee on Social Security of the Committee on Ways and Means is holding its fifth hearing on the social security disability program. We have held hearings in Dallas, Boston, Atlanta, and Hot Springs, and I hope our testimony today will be as frank and helpful as it has been at these previous hearings.

I am truly sorry that we have to conduct these hearings at all. The problems of the disability program have occupied the Subcommittee on Social Security's time for almost a year now. We have put together legislation, H.R. 3755, that will resolve many of the problems we have heard about this past year and that I assume we will hear about again today.

I particularly regret that the Administration, after working with us last year to develop a responsible bill, abandoned this cooperative process earlier this year.

However, I am pleased to say that the Administration appears to be again changing their position in this regard. On April 12th an agreement was reached by the Senate leadership to act on a disability bill in the next few weeks. Following this agreement Secretary Heckler ordered a suspension of the disability review process until new disability legislation is enacted and can be effectively implemented. In addition, Secretary Heckler announced that she will work with Congress to enact disability legislation.

I am glad that the Administration and the Senate have now agreed to support a legislative remedy to the crisis we are facing. I want to tress that while the temporary moratorium as outlined by Secretary Heckler might be understandable, it does not solve the problem. The important thing is that we all work together to pass a meaningful bill soon.

I hope that this legislation will finally bring a measure of order and fairness to this program.

The Congress has focused on the disability program several times over the last six years to ensure that all those who are fairly entitled to benefits receive them. In 1980, our concerns led us to enact a requirement that SSA re-examine all beneficiaries periodically to make sure they are still eligible for benefits. This is a sensible, fair, administrative process, and the Congress was correct in requiring SSA to do it.

However, we left considerable leeway for the Administration to put this requirement into effect, and that's where the problems begin. In 1981, this Administration, in order to get immediate budget savings, began the continuing disability reviews a year before they were required, *and* greatly accelerated the numbers of reviews. This too hasty and harsh implementation of a sensible legislative requirement has proven disastrous.

When we passed the bill in 1980, the continuing review provision was estimated to save $168 million in its fifth year or operation. The current Administration estimate is $1.6 billion, almost 10 times the original estimate! During the past three years, nearly 500,000 beneficiaries have been told they are no longer eligible for beneifits. Nearly two-thirds of those who appeal their termination have had their benefits restored, which is some indication of how many erroneous decision have been made.

Although reinstated, these beneficiaries have suffered through a lengthy, stressful and often expensive process.

As a direct result of the CDR procedures used these past three years, the entire social security disability program has been plunged into administrative chaos. In

twenty States, the Federal courts have substituted a court-ordered standard of review other than that called for by the Social Security Administration. In nine other states, the governors have declared a self-imposed moratorium on processing disability reviews.

Responding to this crisis, the House on March 27, 1984, by a vote of 410–1, passed this disability bill. This was in no small part due to the strong support and leadership of my colleague here today, Senator Claude Pepper. This bill should be enacted because it establishes a sound and fair medical improvement standard, uniform national standards for decisions, continuation of benefits through appeal, and earlier face-to-face interviews with claimants at the State agencies, among other provisions. This legislation seems to us the best way to restore order to the disability review process.

That's the purpose of this hearing. We need to hear whether there are still problems with the program, and whether the legislation we have proposed will resolve them. If, as I believe, the program is truly in a mess and enactment of our bill is the best route to solve that mess, that message must be sent loud and clear.

[From the Washington Post, Apr. 28, 1984]

JUDGE ORDERS BENEFITS PAID

A federal judge, saying that Social Security is in a "state of lawlessness," yesterday ordered the government to restore benefits to an estimated 8,000 recipients in seven midwestern states.

U.S. District Court Judge Miles Lord issued his preliminary injunction in a class action lawsuit filed by the Legal Aid Society in Minneapolis.

His ruling affects those whose benefits were terminated by the Health and Human Services Department and those whose applications for benefits were denied.

Earlier this month, HHS Secretary Margaret H. Heckler ordered a temporary halt to Social Security disability reviews, thereby preserving or restoring benefits to 40,000 people fighting cutoffs through administrative appeals.

But that action did not affect the nearly 36,000 people who had suits pending in federal courts.

More than half the states, either under court order or on their own initiative, had stopped moving to remove people from the rolls under the rules set forth by the HHS.

At a hearing Thursday, Lord accused Heckler of making a "mess" out of Social Security.

"We're in a posture of delaying relief to people who may be starving to death," the judge said, citing government delays in obeying standards set out in court decisions.

"Let the person who made the mess live in it," Lord said, referring to Heckler. "It's hard for the secretary to claim duress when she was the one who created it."

Chairman PICKLE. Before we proceed with the first witness, who will be your distinguished Governor, I want to yield now to Chairman Claude Pepper for such statement as he would care to make. Senator Pepper, we are honored to be here in Miami with you this morning.

OPENING STATEMENT OF HON. CLAUDE PEPPER

Mr. PEPPER. Thank you very much, Mr. Chairman. You know it gives me a great deal of personal pleasure to have you here with me in my home district and in my home community, especially to consider a subject as important as this one.

As you have already been told, Mr. Pickle, from Austin, TX, is chairman of the Social Security Subcommittee of the Committee on Ways and Means, one of the most powerful committees of the House of Representatives. He has carried the load of Social Security and related subjects, such as disability insurance, which we are considering today, medicare, and many other areas that are similar in character.

He is my best friend in the House of Representatives. In the House, they often refer to us as we work together from time to time, as working on those "Pickle-Pepper" bills. I am always delighted to have the privilege of working with a man so dedicated to the cause of the people, especially those people who need help, as is my friend, Mr. Pickle.

I am very grateful that we can be here today, because, as you will be told in more detail by our distinguished Governor a little bit later, Florida has suffered in particular from this cruel policy of the national administration. The Government has tried to get off of the rolls these disabled people who have been found by a State agency to be totally and, as far as they could then see permanently disabled.

These are not people who are just applying to be put on the rolls. These are people who have been put on the roll by the several States of this country charged with the responsibility of determining who should be on these disability rolls.

May I just say one word by way of explanation. When you pay your Social Security tax, that tax is divided among three different funds for three different programs. One is what we call Social Security. That is the retirement program. Thirty-six million people get a check every month.

And I see my friend Max Serchuk out there who has been, as you know, one of the great leaders of the movement in this country.

Then there is another part of your Social Security payment that goes to a program called disability insurance. That is what we are talking about here today. At the time the Federal Government initiated its policy of trying to get at least one-third of the 900,000 people off the disability rolls, they eventually got almost half of the people off these rolls. Generally they were receiving several hundred dollars a month.

For example, imagine a young man, let's say 25 years old, with a wife and maybe two small children. He has a job and is doing very well. He owns his car and is maybe buying his home, getting along fine. All of a sudden a drunk driver runs into him on the highway. His back is broken, and there he is, no longer capable of holding a job. Well, this is the program that now takes care of that fellow, and tries to provide for his wife and children, his dependents, while he is disabled.

As Mr. Pickle said, in 1981 the Congress thought it would be all right to examine these rolls to see if there was anybody there who shouldn't be there. Well, we never dreamed that the administration was going to take advantage of the authority that Congress had given them. Many times, without any kind of a medical examination, they just set out to cut arbitrarily at least 30 percent off the rolls. It was going to get rid of 30 percent of the patients, in many instances without a medical examination, just by looking at their chart, at what it was that they originally had, and maybe their current status.

The third program to which your Social Security money goes, of course, is what we call medicare, which, thank the Lord, means so much to so many of the senior citizens. You are eligible for that

only after you are 65 years of age. This disability program, therefore, is very important to the people of this country.

During the past 3 years, the administration has successfully removed approximately 500,000 disabled workers—people who had already been selected and deemed to be qualified of this program by a State agency—from the Social Security disability rolls—the primary source of income for approximately 6 million physically or mentally disabled Americans.

Unfortunately, these terminations have often been made erroneously. Nearly two-thirds of those who appeal these determinations to administrative law judges have had appeals that were successfully regarded by the judges and their removals reversed. In other words, two-thirds of those that the Government removed have been put back by law, by the legal judges to whom they were allowed to appeal.

The effects of such terminations on my disabled constituents can only be described as tragic. The State of Florida has been particularly hard hit by this misdirected policy. In 1983 alone, over 34,000 disabled Floridians were told they were no longer eligible for benefits, as Chairman Pickle well recalls, and all the Members of Congress have had remonstrances from their districts about this tragic situtation. A great many of these people, unable to work and their income cut off—no other way to survive—have taken their own lives during this tragic course.

About two-thirds of those eventually had their benefits restored, but over 11,000 have had their benefits terminated. My files are full with stories of disabled Floridians who have lost their homes, their cars, and the access to essential medical treatment. Faced with these hardships, it is not uncommon for recipients to suffer exacerbation of their original impairments, and severe psychiatric problems.

Our subcommittee was told by the Dade County Epilepsy Foundation that there was a 60-percent increase in the severity and frequency of epileptic seizures among their members who received termination notices.

Well, what would you do if you were helpless, had a source of income that was cut off, and maybe had a family to support as well as yourself? We have documented cases of suicide immediately after receipt of such notices.

Although the Secretary of Health and Human Services recently declared a moratorium on removing more disabled from the Social Security disability rolls pending the consideration of reform legislation soon to be considered by the Congress, Mr. Pickle has stopped everything that so far has been stopped. He initiated legislation in the Congress which the Congress warmly supported, and now he is working, as we are all working, for adoption of a permanent legislative policy affecting this matter.

On the one hand, a moratorium is of no help to those disabled individuals whose benefits have already been terminated. On the other hand, the moratorium does not assure the Congress of the administration's support for the kind of legislative solution needed to correct this crisis.

The result of this wholesale purge has been disastrous for the States, local and county governments, and voluntary and private businesses, as well as the disabled American.

Today, we will hear directly from disabled workers who have been told they are no longer eligible for assistance. I am sure you will share our shock when you see these cases. We are very grateful, Mr. Pickle, that you are here today to lend your great leadership and your esteemed influence trying to correct this cruel course that our Government has been pursuing.

[Mr. Pepper's opening statement follows:]

OPENING STATEMENT OF HON. CLAUDE PEPPER, CHAIRMAN, SUBCOMMITTEE ON HEALTH AND LONG-TERM CARE

Ladies and gentlemen, distinguished guests, I am honored that my distinguished colleague, the Honorable Jake Pickle, chairman of the House Ways and Means Subcommittee on Social Security, is joining me in convening this hearing to thresh through some of our serious concerns regarding the current administration of Social Security benefits for the disabled people in Florida and throughout the United States.

The subject of today's hearing is extremely important. Financial assistance for disabled workers stands today as one of the most troubled, and troublesome, component of our entire Social Security System.

During the past 3 years, the administration has successfully removed approximately 500,000 disabled workers from the Social Security disability rolls—the primary source of income for approximately 6 million physically or mentally disabled Americans. Unfortunately, these terminations have often been made erroneously. Nearly two-thirds of those who appeal these determinations have had their benefits restored—but only after lengthy legal appeals which are medically, emotionally, and financially devastating.

The effects of such terminations on my disabled constituents can only be described as tragic. The State of Florida has been particularly hard hit by this misdirected policy. In 1983 alone, over 30,000 disabled Floridians were told they were no longer eligible for benefits. About two-thirds of those eventually had their benefits restored, but over 11,000 have had their benefits terminated. My files are full with stories of disabled Floridians who have lost their homes, their cars, and the access to essential medical treatment. Faced with these hardships, it is not uncommon for recipients to suffer exacerbation of their original impairments, and severe psychiatric problems. Our subcommittee was told by the Dade County Epilepsy Foundation that there was a 60-percent increase in the severity and frequency of epileptic seizures among their members who received termination notices. We have documented cases of suicide immediately after receipt of such notices.

Although the Secretary of Health and Human Services recently declared a moratorium on removing more disabled from the Social Security disability rolls pending the consideration of reform legislation soon to be considered by the Congress—this action is too little and too late. On the one hand, a moratorium is of no help to those disabled individuals whose benefits have already been terminated. On the other hand, the moratorium does not assure the Congress of the administration's support for the kind of legislative solution needed to correct this crisis.

The result of this wholesale purge has been disastrous for the States, local and county governments, voluntary and private businesses, as well as the disabled American.

Today, we will hear directly from disabled workers who have been told they are no longer eligible for assistance. I am sure you will share our shock when they relate to us their personal experiences and frustrations in attempting to maintain their homes, health, and dignity at a most desperate time of their lives.

We will hear from our State and county officials, and from private and voluntary groups—who will detail for us the financial brunt they have borne as a result of this cruel hoax.

I believe the sad story of what the Government of the United States, under the direction of this administration, has done to the disabled people of this country—will be self evident.

I am hopeful that today's hearing will lead to much needed reform.

Our first witness today is the Honorable Robert Graham, our distinguished Governor of the State of Florida. We look forward to your valuable testimony.

Thank you.

Chairman PICKLE. Thank you, Senator Pepper. I appreciate your statement, and more than that, I appreciate the leadership you have given to the Social Security Program throughout the United States.

Our first witness this morning will be the Governor of your State, the Honorable Robert Graham.

Governor, if you will come forward, please, and take your place here at the witness table. Mr. Graham, if you will have a seat, I am going to yield to Senator Pepper.

Mr. PEPPER. Mr. Chairman, this distinguished gentleman needs no introduction to the people of Florida nor, I dare say, to the people of the United States. We are very proud of our distinguished Governor, Bob Graham. He rendered many years of distinguished service and leadership as a member of our State senate. His father was also a senator before him, and rendered distinguished service.

Governor Graham is one of those Governors who is for the people, who has been concerned, and is constantly concerned about the people. His wife is one of the great champions of the elderly in this State, and Governor Graham has been foremost in the cause of education, health, and all the problems that affect our people. He is trying to make, and he is making, Florida a greater and a better State. We are proud to have you here today.

Chairman PICKLE. Governor Graham, we will be pleased to receive your testimony.

STATEMENT OF HON. ROBERT GRAHAM, GOVERNOR, STATE OF FLORIDA

Governor GRAHAM. Thank you very much, Mr. Chairman. Chairman Pickle, Senator Pepper. First, on behalf of the people of Florida, I wish to express our appreciation for your being here today and affording us the opportunity to present firsthand testimony as to the impact in our State of the recent administrative procedures that have been followed relative to Social Security disability determination. Your interest and effective pursuit of a resolution of this very serious human problem is deeply appreciated.

All of us are well aware of the public outcry which has arisen since the President directed the review of recipient eligibility to be stepped up——

Mr. PEPPER. Excuse me. Can you all hear the Governor back there?

All right, thank you, Governor.

Governor GRAHAM. Three years ago Congress had requested an orderly review of this process. However, the administration chose to step up the process beyond that which had been congressionally anticipated. The media have been filled with stories of people who have suffered because of the loss of benefits. Some who were removed from the program lost all hope, and took their lives. Some were filled with anger and threatened the lives of those who were responsible for case reviews.

In Jacksonville, on July 5, 1983, a client of the Department of Health and Rehabilitative Services, our State social services agency, received a letter informing him that his benefits would be

cut off. On that same day, the recipient jumped to his death from a bridge.

In October 1983, in Pasco County, north of Tampa, another recipient shot himself. When he was searched, his notice of termination of benefits was found in his pocket. He died the next day.

In Palo Beach, south of Tampa, a recipient became so disturbed at the impending cancellation of benefits that he wrote a series of increasingly threatening letters to an HRS employee. The agency became so concerned that it referred the case to the Hillsborough office of the Federal Bureau of Investigation.

I am certain that you have received many letters from your constituents just as I have, painfully written letters, letters pleading for my intervention, letters detailing physical and mental impairment, listing needed medications and at the same time making clear the point that without Social Security disability benefits there is virtually no income. These are desperate people, and while all of us support the concept of removing the fraudulent from the benefit rolls, none of us seeks to penalize those who need and deserve this help.

Historically, disability receipients have fallen into two general categories—those who receive benefits but were expected to improve sufficiently to return to work, and those who received benefits and had little expectation of returning to work. Those with potential to go back to work were scheduled for regular reexamination of their medical conditions.

Within the past year, Florida has done 4,810 of those regular reviews. Sixty-three percent, 3,028 people, were continued in the benefit program, and 37 percent, 1,782 people, had benefits stopped.

By comparison, during this same period, Florida did accelerated reviews of 16,817 cases. These are people who generally had poor prognosis for improvement, who were led to expect only occasional review of their cases, and who had every reason to expect to receive long-term disability benefits, perhaps for the rest of their lives.

It is interesting to note that these reviews resulted in continued benefits for 61 percent of the cases, 10,101 people, and loss of benefits for 39 percent, or 6,616 people. The loss figure is statistically higher than expected. In fact, it is higher than the figure for those who did not have some expectation of being able to return to work. I underscore that of those people in the category who were expected to have medical improvement and be able to return to work, those people had a lower percentage of termination of disability than did those in the category who had no expectation that they would be able to return to work. This disparity points to the existence of some very basic problems in the accelerated review procedures.

These problems are being addressed by the legislation which the chairman has so ably and forcefully presented to Congress. These would be addressed by provisions such as clear standards for determining eligibility for new cases, and for those being reviewed; uniform national policy in the administrative process, with a more easily understood application and appeal procedure; and standardized procedures for Federal policymaking.

Within the past year, judicial action resulting from class action suits and unilateral action on the part of individual States has further fragmented a system which has already been described as being in disarray. In Florida, we have consistently resisted appeals to invoke our own moratorium on further benefit cutoffs.

This does not mean that we have not recognized the plight of our citizens. Rather we believe, as does Chairman Pickle, that the benefit program will be better served in the long run by Congress acting on a reform bill which will move us to a national standard of uniformity rather than contributing to further disarray.

The National Governors' Association has supported this position as well, and has called on Congress to continue benefits through the administrative judge level in continuing disability investigation cases; to follow a well-defined medical improvement standard, before deciding to terminate benefits which have once been given; to publicly promulgate the policies and regulations that will affect the benefit determination; to require the Social Security Administration to apply judicial decisions or appeal through the courts those with which it disagrees; to provide face-to-face interviews at the initial decision level; and to place a temporary moratorium on mental impairment reviews until the criteria for those judgments can be fairly revised.

The public outcry on the subject of disability benefits has caused the Social Security Administration to effect a moratorium on the accelerated review program. This has solved an immediate pressing problem, and we hope that Congress can now move swiftly on this legislation to provide the legal basis for what we agree are much-needed changes in a program that is the only major support for thousands of families struggling to make do in the face of serious physical adversity.

We believe that the criteria set forth in H.R. 3755 represent significant improvement in standardizing procedures for determination. They bring into law procedures that have developed over the years through regulation. They establish a clear position that applicants and their representatives can identify easily.

The section that calls for a study concerning evaluation of pain is a much-needed provision. This has always been a difficult issue to deal with, because it is highly subjective. We would welcome such a study with subsequent legislation to follow. The new language allowing the consideration of the combined effect of multiple nonsevere impairments on a person's ability to work is a good step toward assuring more equitable decisions on what is truly a disabling circumstance.

Our review of the bill found it to be an excellent piece of legislation, one that we support fully, and one that we believe will provide the kind of balance that is needed to ensure that the disabled receive appropriate benefits, and those who are able to work are removed from the rolls under a well-defined process that is both fair and uniform.

We appreciate this opportunity to present the position of the State of Florida. Thank you.

Chairman PICKLE. Thank you. Governor, you mention that your State would support a bill that is pending in the Congress, H.R. 3755, as authored by me and supported by Senator Pepper and

some of the others. At this point I think I am going to list three or four things that bill contains, so that you and the public may have a better understanding.

This is what the bill essentially will do. It would establish a workable medical improvement standard. It says, in effect, that before a person would be removed from the disability rolls, the Social Security Administration must prove that there has been medical improvement. Otherwise, if they had been disabled, they are going to still be disabled, but the burden of proof falls on Social Security. They have to show that there is medical improvement.

Another thing it does, it says that a permanent requirement that benefits would be paid through the the ALJ level. As it is now, if a person is removed from the rolls, and appeals, the benefits might be cut off, and if it is appealed, it may be 6 or 8 months before that case is decided. A part of this bill says that benefits will continue to be paid through the ALJ level, administrative law judge level, so the people, for 6 or 8 months at least, would not be cut off of benefits. Then they have either won it on appeal or they will have lost it, but certainly they would not lose their benefits during that time.

Another thing the bill provides, it says that there will be requirements that there be uniform standards of disability determination at all levels of consideration, and on a national basis. A lot of difficulty has been that the standards of determining who is and who is not disabled is one thing in one community in a State, and it is considered in a different light entirely sometimes by the administrative law judge. We are saying that there must be uniform standards for all those who are considering these cases. When we have uniformity, then we are working from the same book, essentially. And even more essential, and this is a point that Senator Pepper has made to me in the past, we ought to have regulations.

The Social Security Administration can issue a rule and say we are going to administratively handle a case in a certain way, but unless you put that rule into regulation and say that is what we are going to go by, they change the rule next week or next month, not maliciously perhaps, but they do it, and the damage is all the same. We are saying that there be uniform standards.

Mr. PEPPER. May I just add to what Mr. Pickle is saying. Before you can change a regulation, it has to be duly promulgated in a legal way and appear in the Federal Register, so that anybody can read it all over the country, the Congress as well as the people; whereas these administrative changes can be issued overnight anywhere, and nobody knows what they are until they are put in effect. Excuse my interruption.

Chairman PICKLE. I am glad you added that, Senator.

Two other things the bill provides. It says there will be a moratorium on all cases where there has been mental impairment. People are confused. They don't know how to appeal or file their applications, so we just have a moratorium on that. The bill also provides that there will be face-to-face evidentiary hearings by January 1, 1985, at the initial stage. We are trying to give individuals the right to come in and present their evidence at the beginning, up front, early, and not have to wait 8 months later for the first time to go before an adminstrative law judge and have face-to-face or

eyeball-to-eyeball testimony. Up until that point, you don't talk to anybody. You just receive a letter saying you have been cut off. We are trying to have face-to-face evidentiary hearings at the early stage. Those are some of the basic things that we are trying to have in this legislation.

Governor, my State of Texas has not removed itself from the disability rolls, and neither has Florida. We are two of the main States, the largest States, at least in number of cases involved, who have stayed within it, and yet my Governor has been on the verge of saying, "I am going to take my State out of the disability program because it has been cut off unfairly," but he hasn't done it. He has been that close, and he has held off on the basis, largely I guess, because of my plea that we are going to pass legislation.

Now, if we don't pass legislation, what is your State to do here in Florida? I presume that chaos is going to continue. Is there any relief other than some legislation?

Governor GRAHAM. Mr. Congressman, you have identified a very difficult and painful dilemma. On the one hand, you have people who you feel are not being treated fairly under the current system, and, therefore, your motivation is to come to their assistance by removing your State from this inequitable circumstance. On the other hand, you recognize that that will not contribute to what our goal is, which is to have a nationwide program that is fair, that is uniform, and so our position has been to urge, as we do this morning, the Congress to take expeditious action to reform the program, so that we don't have to take unilateral action of removal. If the Congress appeared to be unwilling to do that, and then we were faced with the choice of doing nothing or taking steps to protect the interests of our citizens——

Chairman PICKLE. Our administration has said that they are going to correct these inequities and these uncertainties by administrative changes, and we didn't need legislation. They have been saying that now for a couple of years, and so while they claim that all they have got to do is pass a new rule, and they can straighten it out, while they are claiming that, at the same time 29 States have either removed themselves entirely from the rolls or the Federal courts have taken them off.

I read earlier—I don't know whether you heard it——

Governor GRAHAM. I heard it.

Chairman PICKLE [continuing]. Where a Federal judge said, "This is a terrible mess that we are in." This was a class action suit in the Midwest. Now, if that has happened there, that is going to be happening in other places. In other words, the courts have finally said, "This is intolerable and you have got to do something about it." I would say that your State, and my State of Texas, are looking for relief. You want to be a part of the review process, determining who is eligible, and who isn't eligible, and at the same time you have to have common rules to go by. If we don't have them, then it seems to me like this chaos is going to continue. I am hoping that we can pass this legislation. That is the paramount question.

Governor GRAHAM. Right now the pressure has been somewhat eased by the imposition of the moratorium on accelerated reviews, but I would say that if that moratorium is lifted without congres-

sional action in its place, that is going to force the issue in Florida and in other States.

Chairman PICKLE. Governor, this moratorium that the administration has proffered has been a cruel hoax. They wanted to have a moratorium originally of 18 months. That would probably just delay consideration of legislation. Now, I think they have changed that position and said we are going to have a temporary moratorium until Congress can pass legislation. That is a much better approach. I don't give them a lot of credit for that because I think they have ended up to the point where they have no other recourse. They have to do something, because people are being removed by the thousands. I am hoping that we might have uniform legislation here for all the States, your State and mine.

Senator Pepper.

Mr. PEPPER. I think you and the Governor have clarified the matter very well. I know how conscientious the Governor's concern is. It is a concern of all of us. I think the way out of this dilemma is to pass this legislation just as soon as possible. Thank you very much.

Chairman PICKLE. Governor, let me ask you another question. You said that you would support this legislation. I presume that you are also in a position to say that the National Governors' Association also supports this legislation?

Governor GRAHAM. Yes. In my statement I indicated the National Governors' Association support, and the principles also in that resolution of support were almost verbatim the basic themes of your legislation.

Chairman PICKLE. Of the legislation that is pending. I felt that was the case. We have been assured that the Governor's position represents our legislation, too.

Governor, we thank you. I personally thank you for staying with the program and not removing your State, so the people can have these reviews, and have consideration. My State and my Governor stayed with it. I hope we can get you action. I think we will get action in the next 30 days.

Governor GRAHAM. Good.

Chairman PICKLE. There is that general agreement that aid relief must be given. I will be disappointed if we don't have a bill passed in the Congress within the next 30 days.

Governor GRAHAM. Outstanding.

Mr. PEPPER. May I just add this, Governor?

I regard what has happened in the last 2 or 3 years in this area as one of the cruelest manifestations of governmental policy I have known in over the third of a century I have been in the Congress of the United States.

Governor GRAHAM. Thank you very much, Mr. Chairman. Again, I appreciate the opportunity to be here. We will look forward with enthusiasm to your success in the Congress.

Mr. PEPPER. Thank you.

Chairman PICKLE. Thank you, Governor.

Now, the Chair will call to the witness table here a group of individuals who will present their testimony. This will be panel No. 1. These people consist of Paulette Ettachild, Mr. Eugene Pickett, Mr.

Joaquin De La Fuente, and Ms. Pearl Graydon. If you will come forward and take your positions here at the witness table.

While the witnesses are taking their place at the table, we are going to proceed at this point to receive a short statement from the mayor. I recognize Senator Pepper for this purpose.

Mr. PEPPER. Chairman Pickle, we are very proud of our Dade County mayor, the Honorable Steve Clark. He has given great leadership to our county and our people in trying to make things better for all the people of this county.

He has been concerned about matters of health, about jobs, about growth, and about the wholesomeness of this community, and I know he has been very deeply hurt by the difficulties that he has seen in this county of people who have been cut off of the rolls, who are disabled, who are unable to take care of themselves and support their dependents, because of a ruthless policy of the national Government. We are proud to have our able and good mayor come here to make a statement this morning.

Chairman PICKLE. Mayor Clark, we are happy to receive your statement.

STATEMENT OF HON. STEVE CLARK, MAYOR, DADE COUNTY, FL

Mr. CLARK. Just a short statement, Mr. Congressman. I fully support the position taken by our Governor because we work hand in hand every day in State and local government.

For your information, Mr. Congressman, we live in a very different community here in Dade County. Dade County supports one-fifth of the population of the State of Florida, right in our county, so it means we have close to 2 million people in our county. The Senator knows this very well, and does his great job of representing the district he represents ably.

The only problem we have in our community, in addition to the fine people who are disabled, is that a major portion or a great percentage of the people that live in Dade County are over 65 years of age, a great percentage, and it will continue to increase and increase and increase, and, God, I hope they live to be 165 years of age, if that be the case. But in the meantime, our planning processses are not the same as they would be in Dallas or Kansas City, New York or Chicago, because we must plan 15, 20, 25 years into the future, depending upon the longevity of the people that are going to live here for many, many years.

When the disabled people are so frightfully hit, and you will hear their testimony here today, it doubles our position, because the county of Dade, a major county in the United States of America, must pick up the slack.

Now, where does the slack come from but our taxpayers? We have to continue the programs that will be cut out, if this type of legislation is not passed that you are sponsoring. I am here today, Senator and Congressman, to totally support what you are doing. The county of Dade congratulates you for bringing this forward. Thank you, sir.

Chairman PICKLE. Thank you, Mayor. We are pleased to have your statement. I recognize that Florida uniquely does have a lot of our elderly citizens.

Mr. CLARK. Right.

Chairman PICKLE. I publicly acknowledge again that Claude Pepper has been the leader in a movement to give relief to our elderly citizens, more than any man who has lived in our time, and I know that you in this area are uniquely situated because if we can't do it, Mayor Clark, I know that that falls on your city, perhaps more heavily than in other areas.

I don't know whether you were here——

Mr. CLARK. I heard your statement, yes.

Chairman PICKLE. I think there is general agreement now on the part of the Senate to move legislation forward along the lines that I have mentioned. I don't know that we are in agreement on the details, but at least there is a willingness now to proceed. The administration recognizes that they are at the end of the road. They have got to do something, and that perhaps legislation is best.

Mr. PEPPER. Mayor Clark, I imagine that a lot of these people who are cut off these rolls and don't have any help otherwise probably fall into your sphere.

Mr. CLARK. Absolutely. Without question.

Mr. PEPPER. Our county owns the Jackson Memorial Hospital. What percentage of your county budget in general goes to the hospital?

Mr. CLARK. The subsidy in support of the hospital runs close to $100 million a year. That is about 10 percent of our budget, in addition to the programs, the committee action program, the other programs that help these poor people when they can't help themselves.

Congressman, as an aside, and I like to say this from time to time, I have known this gentleman quite a while. In fact, in 1926 I was a campaigner for Claude Pepper for the U.S. Senate and he won, and I plan to do that until 2036. Thank you.

Senator Pepper, thank you very much.

Chairman PICKLE. Mayor, we thank you for coming. I hope you make it to 2036. I don't know whether you will or not, but Senator Pepper will.

Now, our first people consist of Mr. Eugene Pickett, Paulette Ettachild, representing the Legal Services of Greater Miami, Mr. Eugene Pickett of Miami, and Mr. Dela Fuente also of Miami, and you gentlemen can identify your group or yourselves as individuals, and Pearl Graydon of Miami. We will proceed first with your statement, Paulette Ettachild.

STATEMENT OF PAULETTE ETTACHILD, ESQ., LEGAL SERVICES OF GREATER MIAMI, INC.

Ms. ETTACHILD. Thank you.

Chairman PICKLE. Will you get close to the microphone and speak a little louder?

Ms. ETTACHILD. I am an attorney at Legal Services of Greater Miami. I work for the disabled clients who have suffered the consequences of the Secretary's policy of accelerated disability review. In the process of representing these claimants I have seen administrative lawlessness, callous cruelty, and untold harm inflicted on the disabled of this community.

I would like to mention briefly the story of just one such injustice. Unfortunately, it is but one of many such cases. The gentleman I refer to began receiving disability benefits because he is a chronic schizophrenic. Although there was no change in his condition, the Social Security Administration notified him that his disability benefits would cease. The day he received that notice, he attempted suicide. He was involuntarily committed to a mental hospital. Today, nearly 1 year later, he remains hospitalized. Although there was no evidence of medical improvement, benefits were terminated. This case is now in Federal court and the Secretary has asked for a remand because she lost the tape recording of the administrative hearing. The loss of hearing tapes is a common occurrence, one which will probably delay resolution of this case for approximately 1 more year. In the meantime, this man receives no benefits.

The legal issue raised by this case can be clearly framed. The Secretary refuses to follow the medical improvement standard in evaluating claims for continuing disability benefits. Every circuit court deciding the issue has held that the Secretary must use this medical improvement standard. Specifically, in the 11th circuit, which governs Florida, Alabama, and Georgia, the court ruled in *Simpson* v. *Schweicker,* that the Secretary cannot terminate disability benefits without substantial evidence of medical improvement.

There are two reasons why the Secretary must apply the medical improvement standard. The first reason, and as a lawyer to me the most important reason, is that the courts have told the Secretary that this is the standard which must be used. In our country it has long been settled that the courts interpret the law and the executive branch must obey the courts' interpretation. That is the holding of *Marbury* v. *Madison.* Despite the clear statement of the 11th Circuit Court of Appeals and every other court ruling on the issue, the Secretary refuses to apply the medical improvement standard. The Secretary refers to this refusal to follow the law as enunciated by the courts as her policy of nonacquiescence. This policy of nonacquiescence flies in the face of the rule of law. It allows the Secretary to place herself above the courts and above the law. It is a dangerous policy which undermines our constitutional system of separation of powers.

There is a second reason why the medical improvement standard must be applied. The rock bottom rationale behind the medical improvement standard is the basic notion of fundamental fairness and finality of decision. Each disability recipient has been determined by the Secretary to suffer from a disabling impairment. Many of these recipients have pursued lengthy, expensive, and emotionally draining appeals before the initial award of benefits by the Secretary. Each has been found disabled. It is basic to our system of justice that at some point a legal proceeding must be final and that the facts determined in that proceeding are conclusive upon the parties. The purpose of this policy, called res judicata or collateral estoppel, is to prevent continuous relitigation of facts in an unending succession. It must be noted that the Secretary applies this principle against claimants seeking disability benefits.

The medical improvement standard merely places this same burden on the Secretary. Each recipient has already been declared disabled. This fact should be binding upon the Secretary unless there is evidence that the recipient's condition has improved. Without the application of the medical improvements standard, each recipient must, time and again reprove what has already been proven. As the 11th circuit said in *Simpson,* unless the medical improvement standard is used "termination of benefits will often depend not on a finding of changed condition, but simply on the whim of a changed ALJ."

The rights being adjudicated in these termination proceedings, the right to subsistence level benefits and medicare and medicaid eligibility, are too important to the lives of our disabled citizens to allow decisions based on "the whim of a changed ALJ." In many cases eligibility for benefits means the difference between abject poverty and a decent standard of living. In some cases eligibility means the difference between life and death. I represent Mr. Pickett, who you will hear from, in a class-action lawsuit challenging the Secretary's policy of nonacquiescence and refusal to aid by the medical improvement standard. Attached to my statement are copies of sworn statements from terminated disability recipients. These statements were prepared for Mr. Pickett's lawsuit and I have taken this opportunity to share them with you. They speak more eloquently than I can of the hardship and injustice these people have endured.

On behalf of my clients, I urge that the medical improvement standard be expressly incorporated into the act and that the Secretary's cruel and lawless policy be put to an end.

I would like to comment briefly on one shortcoming of H.R. 3755. The bill does not provide retroactive relief. Thus, while it will end a terrible policy and prevent future injustice, it will do nothing to help those already grievously injured. As but one example, Mr. Pickett will be unaffected by the bill, and he will have to rely on the courts to vindicate his rights. However, even as written, the bill will do much to help our disabled citizens.

[The prepared statement follows:]

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[U.S. District Court, Southern District of Florida, Case No. 83-3087-CIV-WMH]

EUGENE PICKETT, ON BEHALF OF HIMSELF AND PERSONS SIMILARLY SITUATED, PLAINTIFF, VERSUS MARGARET HECKLER, SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DEFENDANT

DECLARATION OF JUAN GUTIERREZ

1. My name is Juan Gutierrez and I reside at 8030 N.W. 8th Street, No. 106, Miami, Florida 33126. My social security number is 267-66-2325.

2. I was found eligible for SSDI benefits in 1978 because of angina and a heart attack. Since that time I have had two more heart attacks. I also have coronary insufficiency, hypertension, and arthritis. My hands are badly deformed from the arthritis. I am 56 years old.

3. In January 1984, the Social Security Administration sent me a Notice of Termination telling me that I was no longer disabled and that my SSDI would stop in May 1984.

4. When I received the Notice of Termination, I got very upset because I have not gotten better and because I did not know how I could afford to pay for a doctor and my medicine. I was so depressed that I began having crying episodes and had to go to my doctor.

5. My doctor says that I am still disabled and that I have not gotten any better. He even says that I have gotten worse.

6. I am trying to save money because I know I won't get another disability check. Ordinarily, I spend $21.00 a week for medicine. Now I am not taking all of my medicine so I can save money. I am supposed to follow a special diet but I can't afford it. My blood pressure has gone up and I can't explain how depressed I am.

7. My wife was so upset by the termination of my benefits that she got sick and has been in the hospital for ten days.

8. I must now find a lawyer and I know I will have to pay 25% of my benefits to the lawyer.

9. I believe my wife and I will die from this terrible experience.

I declare under the pains and penalties of perjury that the above is true and accurate this 16 day of April, 1984.

JUAN GUTIERREZ.

AFFIDAVIT: WILLIAM M. BOSTICK, SOCIAL SECURITY NO. 255-56-0054

STATE OF FLORIDA,
County of Duval, ss:

I, William M. Bostick, swear that the following information is true and correct:

1. I live at 14461 Benton Street, Jacksonville, Florida, in a mobile home with my disabled wife, Alberta D. Bostick. My mailing address is Post Office Box 26393, Jacksonville, Florida 32218.

2. My date of birth is April 11, 1934, and I am therefore 49 years, 11 months and 5 days of age.

3. I do not have a high school diploma and competed only 11 grades of school.

4. My disability was initially established by the Social Security Administration as having its onset in January 1973. Benefits were awarded on the basis of rheumatoid arthritis.

5. My medical problems include the following:

a. Congenital anomaly of the left hip (coxa valga deformity) with a total left hip replacement in 1977.

b. Polio contracted as a young child leaving me with a defect in my legs for which I had surgery at 14 years of age. The problem was only partially corrected and I require orthopedic shoes and a three inch heel build-up.

c. Arthritis, which my treating physician says is severe and progressing, of my back, hands, legs and hips, causing severe and constant pain. Surgery for a left vertebral entrapment was performed in 1982 and has provided me with some relief from the pain which which is still present.

d. Pain in the left ankle which I broke in 1963 and for which surgery was required. Both feet are deformed.

e. Hypertensive arteriosclerotic cardio vascular disease. I had a heart attack 10 years ago and now have frequent angina which often requires 4 nitroglycerine pills before I can get relief. I thought I had a second heart attack in 1982, but now that is uncertain to me, since I have been told the condition at that time was pericarditis. During an arteriogram in July 1983, I had a stroke which has affected my eyesight

and use of my left hand. This was the second stroke. I have frequent dizzy spells and explosive headaches. I am scheduled to begin neurology treatment on March 27, 1984.

f. I am not able to stand for more than a few minutes at a time and walking is extremely difficult. I must use my arms for balance and to assist in coordination of my legs and feet. I can not climb stairs or bend, stoop or squat. Because I need my hands and arms free for balance, I am unable to lift or carry items.

5. The Social Security Administration says that I am no longer disabled and that I am able to work. This is simply not true. My condition has considerably worsened since 1973! I could not possibly work and find it extremely difficult to take care of myself and get about for my everyday personal needs. The Social Security Administration says I can walk for six hours in an eight hour day; I can not walk for six minutes at one time.

6. A copy of a Feburary 16, 1984, report by my treating physician, Desanka Gajic, M.D., and treating physician's assistant, Jay Herring, III, P.A., is attached.

7. My wife and I have been continuously harassed by the Social Security Administration beginning when her benefits were cut off for a period of several months in 1979. We were forced to use all our life's savings for our day-to-day living expenses. A year later her benefits were restored but not until after a new application was filed and we endured the stress of a lengthy appeal process. Then we were notified that she had been overpaid and repayment was demanded. We simply do not have the money to repay. We can never recover from the financial strain on our limited income, all because of errors and unfair and incorrect decisions made by the Social Security Administration. I am so discouraged at this point that I have seriously considered suicide on several occasions. The stress and trouble we have been caused has had a most damaging effect on my wife who suffers a heart condition and on my own health.

8. If the Social Security Administration terminates my benefits to which I am entitled in April 1984, as I have been notified,

a. Our car will be repossessed and we need it desperately for transportation to and from our weekly appointments with our doctors.

b. I will not be able to purchase the orthopedic shoes I need. They cost over $100.

c. We will not be able to afford even the barest of necessities including the rent on our home. In fact, at the present time, we owe for our heating gas. We will be deprived of our lifeline because we will not be able to afford our medications.

WILLIAM M. BOSTICK.

UNIVERSITY HOSPITAL OF JACKSONVILLE,
Jacksonville, FL, February 16, 1984.

Re: William M. Bostick.

BEVERLY E. FRAZIER,
Paralegal, Jacksonville Area Legal Aid, Inc.,
Jacksonville, FL.

DEAR MS. FRAZIER: William Bostick has been a patient of mine since August, 1983 for the following conditions: hypertension, degenerative joint disease, cerebralvascular insufficiency. He has under gone total left hip replacement and had poliomyelistis as a child. In 1982 Mr. Bostick underwent exploration of cervical spine revealing entrapment of vertebral artery by osteophytes of c-spine with subsequent release. X-rays of Mr. Bostick's hip also reveals myositis ossificans along with osteophytes and arthritis of spinal column.

Due to Mr. Bostick's difficulty walking with the residual effects of polio as well as the hip disorders mentioned he has a very irregular gait while walking. This unables any continuous walking and/or lifting. This also greatly inhibits his manual dexterity needed in sustained activity of lifting or walking.

Mr. Bostick had a CVA in 1980 which limits his use of extremities of his left side. He also has headaches and dizziness possibly caused by cerebralvascular insufficiency. An arteriogram was being performed 2-3 months ago but due to developing adverse reactions during the procedure it was stopped. Mr. Bostick has appointments with neurosurgery for monitoring of symptoms.

Mr. Bostick's hypertension medication includes: HCTZ 50 mgs. q.d., Minipress 1 mg. q.h.s., Aldomet 500 mgs. tid. Also for the arthritis he takes Motrin 500 mgs tid. Although he continues to have chest pains, the exact etiology is undetermined at this time.

Due to the degenerative nature of the arthritis, Mr. Bostick's condition will gradually become more severe. The manual dexterity and coordination will also probably not improve over time.

Based on the above information, my conclusion is that the patient is not functionally able to perform any work, including sedentary jobs. The conclusion is based primarily on his poor coordination, manual dexterity and limiting factors that resulted from previous surgeries and diseases.

Sincerely,

JAY HERRING III, PA-C.
DESANKA GAJIC, M.D.,
Staff Physician, Primary Care Center.

AFFIDAVIT: ROBERT F. SIETMAN, SOCIAL SECURITY NO.: 270-26-6482

STATE OF FLORIDA,
County of Duval, ss:

I, Robert F. Sietman, being duly sworn, depose and state as follows:

1. I live at 230 East First Street, Jacksonville, Florida, in Centennial Towers, an apartment building for elderly and disabled persons under a HUD program.

2. My date of birth is October 11, 1931, which makes me 52½ years old. I am 6' tall and weigh 125 pounds.

3. I do not have a high school diploma and completed only 9 years of school.

4. My disability was initially found to have an onset date of August 19, 1980, by the Social Security Administration because of pulmonary emphysema. My treating physician at that time diagnosed me as having moderately severe obstructive pulmonary disease with very little evidence of bronchial spasm.

5. In addition to the pulmonary disease, I also suffer from back pain from degenerative osteoarthritis in the sacroiliac joints. A disc was taken out of my back in an operation back in 1962, and I also was operated upon for a collapsed lung in 1969. In the past I suffered from alcoholism, but have stayed away from liquor since April-May, 1983 after I was hospitalized for my alcoholism and for an increase in my breathing difficulties.

6. In July, 1983, I was examined by a medical consultant physician for the Social Security Administration who found that I suffer from severe chronic obstructive pulmonary disease with severe restrictive component present.

7. I worked as an automobile mechanic in the 1950's and as an electrician in the 1960's and 1970's until 1978. From 1978-1980 I worked on construction out of a labor pool. I finally could not work anymore because of my back and breathing problems. I needed to do climbing and walking on these jobs and it was not possible for me to do so because of my medical problems. My last job in Pasadena, Texas lasted only one week. I could not keep up because of my breathing difficulties.

8. When Social Security first told me that I am no longer disabled, the position taken was that I could return to my former jobs. That is not true. There is no way that I could do the walking, climbing, and lifting required in those jobs. I had a hearing before an Administrative Law Judge who agreed that I could not go back to my former jobs because those jobs required heavy lifting which I cannot do. However, the Administrative Law Judge found that I could perform light work, which would involve lifting up to 20 pounds and a good deal of walking and standing. I disagree with those conclusions:

First, the consulting physician for Social Security found in July, 1983, that I suffer from severe chronic obstructive pulmonary disease. My condition has not improved and indeed has worsened since I was found to be disabled in 1980 with moderately severe obstructive pulmonary disease.

Secondly, my treating physician has continually found that I suffer from severe chronic obstructive lung disease, and recurrent asthmatic bronchitis. On the basis of his examination of me and his review of the pulmonary function study performed by the Social Security consultant physician (which confirmed his diagnoses), he stated that he expected me to continue to be short of breath and get worse with even minor exertions such as walking a block.

Thirdly, I have great difficulty with my breathing if I have to walk more than a block. I do not walk anywhere and spend most of my time watching television. I have episodes of trying to stand up and getting dizzy and not being able to exhale or inhale. I live alone but have a neighbor who checks on me each day to be sure that I am all right. I take care of my apartment, but only do very little work and have to sit down and rest. There is no way that I can work, and certainly not in a job which would require a good deal of walking and standing.

9. I received my last Social Security check the beginning of April, 1984. I do not believe that I shall get any more money from Social Security. I do not know what I am going to do, because I have no other source of income and no way to pay for

rent, utilities, and food. I have bills which I do not know how I shall pay. I am very depressed and do not know what to do.

ROBERT F. SIETMAN.

[U.S. District Court, Southern District of Florida, Case No. 83-3087-CIV-WMH]

EUGENE PICKETT, ON BEHALF OF HIMSELF AND PERSONS SIMILARLY SITUATED, PLAINTIFF, VERSUS MARGARET HECKLER, SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DEFENDANT

DECLARATION OF EARTHA GRIMES

1. My name is Eartha Grimes and I reside at 716 S. W. 11th Avenue, Homestead, Florida. My Social Security number is 264-56-5267.

2. I was found eligible for SSI benefits in July 1975 because of my sickle cell disease.

3. In February 1983, the Social Security Administration sent me a Notice of Termination telling me that I was no longer disabled and that my SSI would stop.

4. When I received the Notice of Termination, I got very upset because I have not gotten better and because I did not know why the government was doing this to me. I was so depressed that I did not come out of my house for days.

5. I have had to start seeing a psychiatrist because I am so depressed about Social Security stopping my SSI check.

6. Because I was afraid that my benefits would terminate, I decided to appeal the decision to terminate. Although, it was a lengthy appeals process, and I had to endure much stress, I won the appeal and the Administrative Law Judge found that I was still disabled. That decision was reached in November, but not until February 1984 did the Social Security office notify me that my benefits would not, after all, be terminated. For one year the Social Security Administration made my life miserable by adding to my disability needlessly.

7. My doctor says that I am still disabled and that I have not gotten any better. He even says that I have gotten worse. In addition to my sickle cell disease, I suffer as a result of the disease from painful episodes that requires that I take very strong medication that has side effects. Also, I suffer from hypertension, multiple joint disease, a peptic ulcer and ocular disease that has caused temporary blindness on occasion. In spite all these documented symptoms, the Social Security office thought I was not disabled.

8. My house burnt down and I did not have money to make needed repairs. In addition, the fire destroyed medical equipment I had for emergencies and painful episodes I suffer, without my benefits I could not survive.

9. My mother, who formerly did all the housework and cooking, suffered a stroke and is also disabled. This, in addition to termination of my benefits, the burning of my house and the severity of my disease has made my life very difficult.

10. I wish I could work but because of my sickle cell disease has created other problems including impairment of my vision and severe pain preventing me from dressing myself of cleaning my house, much less getting a job.

I declare under the pains and penalties of perjury that the above is true and correct this 14th day of April, 1984.

EARTHA GRIMES.

AFFIDAVIT: RAYMOND C. HELMS, SOCIAL SECURITY NO.: 245-28-2626

STATE OF FLORIDA,
County of Duval, ss:

I, Raymond C. Helms, being duly sworn, depose and state as follows:

1. I live at 6537 Dormil Court, Jacksonville, Florida, in a mobile home with my wife who is 66 and retired.

2. My date of birth is February 23, 1926. I am 58 years old.

3. I completed only 7 grades in school and have limited reading ability. This Affidavit was prepared from information which I gave to my legal aid attorney who read it back to me for my approval before I signed it.

4. I was originally granted disability benefits by an Administrative Law Judge who found in his decision of July 28, 1977, that I became disabled as of September 11, 1976. In that decision the Administration Law Judge found that I had acute thrombophlebitis in both legs, chronic venous stasis, peripheral neuropathy and hy-

pertension. He noted that my physician directed me to stay off my legs, and that the consulting examiner found that I could not do any type of work which would require "much standing, walking, or fine use of my upper extremities".

5. I have worked in physical laboring jobs since I was 14, and for the six years prior to my disability I had been the operator of a gas station. I was on my feet all day in that occupation. Because of the problems with my legs, I was not able to continue that operation and sold the gas station in September, 1976.

6. When Social Security first notified me that my disability was being reviewed, I was sent to a consulting physician who found that I had, "moderate circulatory arterial insufficiency in both lower extremities with signs of intermittent claudification" and "moderate bilateral neuropathy of both lower extremities."

That physician also found that I had edema and multiple varicosities in both legs, and either no pulsations or marked or moderate diminished pulsations in various arteries in the lower legs.

7. My own treating physician also reported that I was suffering from the same problems, in particular diagnosing my current problems as: "hypertension, history of gout, peripheral neuropathy with chronic leg pain and paresthesias, chronic venous stasis and obesity."

8. Despite the findings of the consulting physician and my own physician, Social Security says that I can go back to work in my previous position as the operator of a gas station. That is not correct. There is no way that I can stay on my feet and work a gas station. My legs and feet bother me all the time. If I try to walk even a few blocks my feet swell. I wake up in the night with cramps in my legs. I am often numb from the waist down. In particular I do not feel anything in my toes. I have walked around with a tack in my foot and did not know it until it became infected. I also burned my toe on one occasion and did not know it until I look at my toe that evening. Even walking in the house may be a problem, and I have had to grab hold of a piece of furniture to keep myself from falling. I no longer drive a car because I do not think it's safe for me to drive.

9. My medical condition has not improved since I was put on disability, and I think it has gotten worse. At my hearing before an Administration Law Judge on March 29, 1984, my attorney, in her opening statement, tried to argue that this case should be decided on the basis that there was no medical improvement in my condition from the time I was put on disability. The Administrative Law Judge told her not to bother to make that argument because Social Security did not follow that position of law and that he would decide the matter de novo. No decision has been issued yet on this case by the Administrative Law Judge.

10. If I lose my Social Security payments, my wife and I will not have enough income to pay our bills. She receives the minimum Social Security payment of $182.00 per month, but my medicine alone cost $192.00 per month. We own our mobile home, but would not have any money to pay for utilities, food, or anything else which we would need just to keep on living. I do not know what we will do if we lost my benefits. There is no way that I can work.

RAYMOND C. HELMS.

[U.S. District Court, Southern District of Florida, Case No. 83-3087-CIV-WMH]

EUGENE PICKETT, ON BEHALF OF HIMSELF AND PERSONS SIMILARLY SITUATED, PLAINTIFF, VERSUS MARGARET HECKLER, SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DEFENDANT

DECLARATION

1. My name is Mara Howard and I reside at 1425-16th Street, Apt. #3, Miami Beach, Florida 33139. My Social Security number is 079-32-4587.

2. I was found eligible for SSI benefits in 1976 because of a manic-depressive disorder that is not fully controlled by medication.

3. On January 12, 1983 the Social Security Administration sent me a Notice of Termination telling me that I was no longer disabled and that my SSI would stop in March, 1983.

4. When I received the Notice of Termination, I became very upset because I have not gotten better and became fearful that if I lost my benefits I would not be able to pay for my rent, my medicine or doctor. I was so depressed that I became very reclusive.

5. Because I was so upset I had to increase my visits to my doctor and he in turn increased by medication.

6. My doctor says that I am still disabled and that I have not gotten any better.

7. I became very manic as my condition worsened and I lost weight. I began to experience physical changes in my body. I began suffering from diarrhea. My body would get very cold and I became very depressed.

8. When I received the notice of hearing I indicated I didn't want an oral hearing because I felt I just couldn't emotionally handle it.

9. I called Legal Services and when I explained what I had done they told me to go to the Social Security Office to try and get a hearing.

10. I went to the Social Security Office and was treated very badly by the assistant. She told me I had waived my right to a hearing and I would have to wait for a decision and if I didn't agree I could appeal it.

11. When I received the negative decision, I called Legal Services. By this time I was very apprehensive and felt extremely uneasy. My family thought I was slipping again and began visiting me more frequently. But I didn't want to see anyone so I would disconnect the phones and stay indoors as much as possible. I was afraid I would be re-admitted to the mental hospital. When I am fearful my mood swing is elevated and unintentionally and repeatedly I will find myself in situations that are very dangerous and life threatening.

12. After obtaining help from Legal Services, my case was remanded and I had to attend a hearing. I was very nervous and upset so the judge had to stop the hearing two times.

13. I wish I could work. But people make me nervous. I cannot be around them without crying and feeling upset.

14. I became more quiet and more reclusive after the hearing. It took a long time for the decision, approximately 5 months from the date of the hearing.

15. The judge decided that I was still disabled in a decision dated March 14, 1984. For more than a year I had been extremely fearful of losing my benefits without knowing why the Social Security Administration felt I could work when my own doctor didn't feel that there was any improvement in my condition.

16. I know that my case will be periodically reviewed by the Social Security Administration and I fear that I will not survive another experience such as the one I have just undergone.

I declare under the pains and penalties of perjury that the above is true and correct this 14th day of April, 1984.

MARA HOWARD.

Chairman PICKLE. We thank you, Ms. Ettachild. We will proceed now and receive the testimony from Mr. Pickett, since you had made reference to him. We will continue down the list to the other two witnesses. We will ask each one of you to abide by the 5-minute rule, make your statement within that time or even less. Your entire statement, if you have a written statement, will be made a part of the record, so you won't be cut off or fail to have some of your statement included.

STATEMENT OF EUGENE PICKETT, MIAMI, FL

Mr. PICKETT. My name is Eugene Pickett. I am 42 years old and I live in Miami, FL. I worked two jobs as construction worker and I earned a good living until I was hurt on the job. I fell and ruptured a disk. I couldn't work anymore, so I applied for Social Security in June 1975. Social Security wouldn't give me my benefits and I had to go to a hearing. In October 1976 an administrative law judge gave me benefits because of my back problem and high blood pressure.

I haven't gotten any better. The herniated disk hurts all the time. I walk with a cane. My blood pressure is really bad. You can imagine how I felt when in March 1983 Social Security told me I could work and wouldn't get benefits. My SSDI and medicare stopped in May 1982. I was used to working and having money to spend. It was hard enough to be sick and in pain and live on $688 a

month in disability benefits. But when my benefits stopped, I felt like my life was over.

I had to go to welfare and they gave $156 a month. I spent $90 of that on prescription medicines and clinic visits. I couldn't afford a house anymore. I lived with friends and relatives. But friends and relatives can only help so long. I wound up on the street. I slept in cars and in local missions. It's hard for a man with a herniated disk to sleep in cars. It hurts. I couldn't afford my salt-free diet. I couldn't take medication regularly. My blood pressure went up to 260/160. I thought I would die. I never had a mental problem before, but being so poor and so sick worked on my nerves. I started thinking about killing myself. I started hearing voices. I had to start seeing a psychiatrist and he gave me nerve medicine.

When I was working and had money I heard hard luck stories like this. I used to hear stories about poor people eating dog food, but those stories weren't real to me. Now I understand. I swear to God there were times when I would have been happy to have dog food to eat.

I had a hearing and the ALJ read all the evidence and said my condition hadn't improved. He ordered my benefits started again. The appeals council said that it didn't matter that my condition hadn't improved. They wouldn't start up my benefits.

I don't understand all the legal parts of my case, but I know my lawyer went to court and got an order for my benefits to start. That was in December 1983. I had been without benefits for 1 year 10 months. I hope this never happens to me or anyone else again.

I also want to know, are the judge's rulings in this country any good anymore. I have been before three. They all ruled in my favor. I hope you can do something to stop Social Security from treating people this way.

[An attachment to the statement follows:]

DEPARTMENT OF HEALTH AND HUMAN SERVICES,
SOCIAL SECURITY ADMINISTRATION,
OFFICE OF HEARINGS AND APPEALS.

Name and Address of Claimant:
Mr. Eugene Pickett,
1870 N.W. 70 Street,
Miami, FL.

NOTICE OF FAVORABLE DECISION, PLEASE READ CAREFULLY

The enclosed decision is favorable to you, either wholly or partly. If you are satisfied with the decision, there is no need for you to contact the hearing office or the Social Security office. You will be notified as soon as action on the decision has been completed.

If you disagree with the decision, you have the right to require the Appeals Council to review it within 60 days from the date of receipt of the notice of this decision. It will be presumed that this notice is received within 5 days after the date shown below, unless a reasonable showing is made otherwise. You (or your representative) may file for review at your local Social Security office or at the hearing office, or you may write to these offices indicating your intent to request review. You may also mail the request for review directly to the Appeals Council, Office of Hearings and Appeals, SSA, P.O. Box 2518, Washington, D.C. 20013.

The Appeals Council may, on its own motion, within 60 days from the date shown below, review the decision, which could possibly result in a change in the decision (20 CFR 404.969 and 416.1469). After the 60-day period, the Appeals Counci generally may only reopen and revise the decision on the basis of new and material evidence, or if a clerical error has been made as to the amount of the benefits or where there is an error as to the decision on the face of the evidence on which it is based

(20 CFR 404.988 and 416.1488; 42 CFR 405.750 and 405.1570). If the Appeals Council decides to review the enclosed decision on its own motion or to reopen and revise it, you will be notified accordingly.

Unless you timely request review by the Appelas Council or the Council reviews the decision on its own initiative, you may not obtain a court reiew of your case (section 205(g) 1631(c)(3), or 1869(b) or the Social Security Act).

This notice and enclosed copy of decision mailed February 3, 1983.

DECISION OF OSCAR ISAACSON, ADMINISTRATIVE LAW JUDGE

The evidence of record shows that the claimant was found to be entitled to a period of disability and disability insurance benefits beginning September 3, 1974. However, disability was found to have ceased as of March 1982. (It is the policy of the Social Security Administration that the month of cessation will ordinarily be the month that the claimant is informed that his disability has ceased.) It is not necessary for the claimant's impairments to have improved for disability to be ceased. Rather, the question to be resolved is whether the claimant's impairments precluded substantial gainful activity at the time disability was found to have ceased.

SUMMARY AND EVALUATION OF THE EVIDENCE

Based on the application filed on June 16, 1975, the claimant was determined to be entitled for a period of disability benefits commencing on September 3, 1974 and to disability insurance benefits under section 216(i) and 223, respectively, of the Social Security Act. A letter dated March 8, 1982 (Exhibit B-4) informed the claimant, Engene Pickett, that evidence in his file indicated that a determination would be made that he had regained the ability to engage in substantial gainful activity in March 1982. In a later notice of July 13, 1982 (Exhibit B-9) the Social Security Administration notifed the claimant of the determination of his ability to do substantial gainful work beginning in March 1982, and advising him his last disability payment would be for the month of May 1982. After administrative appeals, which were negatively considered at the initial and reconsideration level, claimant lodged a Request for Hearing and a hearing on his matter was heard on January 17, 1983 with the claiment appearing and participating. Claimant was adequately represented by Legal Services of greater Miami in the person of Anita Cava, an attorney at law. At the hearing the claimant alleges that his disability from his herniated disk is ongoing and prevents him from being engaged in substantial gainful employment. Claiment has a high school education and has relevant work experience as a heavy laborer.

At the hearing, claiment testified that he received a Workmen's Compensation settlement in 1976 for $11,000.00 and that he last worked on September 3, 1974. He stated he is currengly undergoing treatment at the Family Health Center of Miami with Dr. Taylor who prescribes oral medication for him. He stated he is totally disabled because he has severe pain from his right hip radiating down to his right leg and foot; from shortness of breath in the morning or whenever he exerts himself; and from chest pains which sometimes radiate down his left arm; as well as having dizziness from his hypertension.

The medical evidence presented at this hearing that was considered was evidence of a date shortly before and subsequent to the cessation determination of March 1982 and which address any changed condition of the claimant. Such evidence is reviewed and summarized below.

Recent medical evidence includes letters from the claimant's treating physician, Dr. Arnold A Oper which reflect historical treatment information from 1974 through 1979, but no current information. (Exhibit B-18).

Concurrent to the cessation re-evaluation, the diagnostic services of a board certified internist, Dr. Robert S. Dickstein were obtained. Dr. Dickstein examined the claimant on February 24, 1982 and made findings that claimant's chest emmitted scattered wheezes and bronchi but without increase in chest size of hyperresonance. A neurological examination revealed good motor function, sensation, reflexes, pulses, and the absence of any edema. It did however reflect that the claimant's straight leg raising test was positive in both legs at fifty-five degrees. An examination of the claimant's musculoskeletal condition revealed full range of motion of all joints without joint tenderness, swelling, muscle spasm but that the lumbar spine was capable of only seventy degrees of flexion. Dr. Dickstein's diagnosis of the claimant was: malignant hypertension without significant complication; chest pain, probably angina, with negative stress test; chronic alcoholism; lumbar strain; exertional dyspena; and hemorrhoids by history. In his narrative, Dr. Dickstein related

that the severe malignant hypertension of the claimant was without congestive heart failure or complications, and moreover those electrocardiogram test results that were obtained (although the test was discontinued because of dizziness) were probably negative, and that the test was conducted without chest pain. A pulmonary function test also conducted by Dr. Dickstein yielded acceptable results. X-rays of the claimant's lumbar spine and chest revealed respectively, preservation of disk spaces and vertebral body heights, and no heart abnormalities. (Exhibit 19)

Subsequent to the hearing, interrogatories posed by claimant's counsel to claimant's treating physician, Dr. Arnold Oper, reflected treatment through oral medication as recently as 1982 to lower the cliamant's blood pressure and that results therefrom were fair to poor. Dr. Oper diagnosed that claimant's impairment of severe hypertension one that would last for greater than twelve months and that both systolic and distolic levels were markedly elevated in spite of medication. Dr. Oper opined that the strain of lifting twenty pounds "could produce a stroke" and that straining and anxiety would aggravate the claimant's blood pressure. Dr. Oper's impressions were supported by electrocardiogram results reflecting left artial abnormality, and left ventricular hypertrophy. The electrocardiogram results so interpreted were those of May 7 and 11, 1982, (Exhibit B-24). Similarly, an interrogatory posed to Dr. Taylor of the Family Health Center of Miami produced responses that Dr. Taylor diagnosed claimant as having lumbar disc disease, that same would last for greater than twelve months and that the problem would be of indefinite duration. As to the claimant's ability to perform work involving lifting twenty pounds, Dr. Taylor stated that "Such work would exacerbate spinal problems." And that lifting, repetitive standing and sitting would put increase pressure on the claimant's lumbar spine disc. (Exhibit B-25).

Based on all the evidence, the Administrative Law Judge finds that the claimant remains disabled under the Social Security Act. The claimant has made the allegations of impairments in his inability to work in substantial gainful activity because of his prior existing lumbar disc problems, and the additional condition of malignant hypertension. The burden of the Secretary is to muster substantial and sufficient medical evidence as could show that claimant is no longer disabled (*Simpson* v. *Schwiker*, 69 Fed. 2nd 966; November 12, 1982) and that burden has not been met. The recent treatment records of Dr. Taylor and Dr. Oper when compared and contrasted to the totality of the claimant's older medical records are more similar than dissimilar and make no mention of remission of chosen diagnoses. Thus, these consultative and disagnostic examinations secured subsequent to the initiation of the cessation action portray no alleviation of the claimant's back condition but moreover display quite the opposite; that the claimant's disabilities are ongoing in nature and place him in a position of no reasonable expectation of obtaining, pursuing, or enduring substantial gainful activity in employment even of a sedentary nature.

The evidence of record shows that the claimant suffers from vertobergenic disorders involving lumbar spine disc and not fully controlled hypertension. This combination of impairments is the equivalent of impairments listed in section 1.05 C (medically severe) and 4.00 C (medically determinable though not severe) of the "listings." Consequently, the claimant continues to be "disabled" pursuant to 20 CFR 404.1520(d) and section 1.05 C of Subpart P, Appendix 1, Regulations No. 4.

FINDINGS

After careful consideration of the entire record, the Administrative Law Judge makes the following findings:

1. The claimant has not engaged in substantial gainful activity since his original award.
2. The medical evidence establishes that the claimant has severe vertobergenic lumbar disc disease (severe); and significant hypertension not fully controlled with medication but without end organ damage (not severe).
3. The severity of the claimant's impairments equals the requirements of section 1.05 C, Subpart P, Appendix 1, Regulations No. 4 and has continued to preclude him from engaging in substantial gainful activity.
4. Pursuant to 20 CFR 404.1520(d) and the above findings, the claimant's impairments continue to be disabling.

DECISION

It is the decision of the Administrative Law Judge that the claimant continues to be entitled to a period of disability and to disability insurance benefits under sections 216(i) and 223, respectively, of the Social Security Act.

List of Exhibits—Eugene Pickett, claimant, 238-66-4525

Exhibit number and description	*Number of pages*
Documents in connection with prior hearing:	
1 through 34.—Exhibit list and exhibits from previous hearing	98
B-1.—Hearing decision by Joe D. Sparks, Administrative Law Judge, dated Oct. 15, 1976	4
B-2.—Disability determination, Oct. 26, 1976	1
Documents in connection with current hearing:	
B-3.—Report of continuing disability interview, Dec. 7, 1981	4
B-4.—Eligibility to continue disability, Mar. 8, 1982	2
B-5.—Cessation of disability, dated Apr. 5, 1982	2
B-6.—Social Security Termination Notice, Apr. 13, 1982	2
B-7.—Request for Reconsideration, Apr. 20, 1982	1
B-8.—Cessation of disability, July 12, 1982	2
B-9.—Social Security Notice, July 13, 1982	1
B-10.—Request for hearing filed, July 21, 1982	1
B-11.—Vocational report, Dec. 7, 1981	6
B-12.—Reconsideration disability report, Apr. 21, 1982	6
B-13.—Claimant's letter, Mar. 17, 1982	6
B-14.—Claimant's statement when request for hearing is filed and the issue is disability, July 21, 1982	1
B-15.—North Dade Hospitalization covering period from Sept. 8, 1974 to Oct. 2, 1974	3
B-16.—Discharge Summary from Hospitalization from Oct. 8 to Oct. 26, 1978	1
B-17.—North Dade Hospital report from July 9, 1979 to July 14, 1979	2
B-18.—Letters from Arnold A. Oper, M.D., dated Jan. 22, 1982 and Feb. 19, 1982	2
B-19.—Consultative examination by Robert Dickstein, M.D., dated Feb. 24, 1982	12

Chairman PICKLE. We thank you, Mr. Pickett. You have certainly presented a very painful set of facts that it is hard for us to accept.

Mr. PICKETT. It has been very expensive.

Chairman PICKLE. We appreciate that you would come here and make this statement, so we can see that there are a lot of people that have been terribly wronged in these kinds of cases.

Now I am going to ask that we receive a statement from Mr. Dela Fuente from Miami.

STATEMENT OF JOAQUIN DELA FUENTE, MIAMI, FL

Mr. DELA FUENTE. My name is Joaquin Dela Fuente. I am 55 years old and I live in Miami. I began receiving disability benefits in 1975 because I have polycythmia vera which is a terminal blood disease. My doctor tells me that, if I'm lucky, I'll live another 5 years. If I'm not lucky or if I don't take my medicine and prescribed treatment, I may not live another year.

Polycythmia vera causes a lot of bad symptoms. My spleen swells to the size of a football. I have radiation treatments to shrink my spleen so it won't bust. I get attacks of vertigo almost every day and I crawl to the bathroom to vomit. I black out once or twice a month. I also have congestive heart failure with severe angina. I had a stroke and a heart attack. My doctor says I must avoid all physical activity.

In February 1983 Social Security sent me a letter saying I would not get benefits after March. At that time my Social Security check was $456. My wife and I live on that. I spent $114 a month on medicine and doctors' visits. When I got the letter, I thought I would

have another heart attack. It's hard to tell you how I felt. I can't work. If I don't take my medicine, I will die. I need my Social Security to buy my medicine and to support myself and my wife. I was so upset and depressed that it's hard to explain. I couldn't sleep. I had to go to my doctor and start taking nerve medicine. I almost had a nervous breakdown. Ten months later I got a decision from an administrative law judge saying I was still disabled. I attach a copy of the decision to show that everything I say about my illnesses is true. The 10 months I waited to hear about my benefits were the worst months of my life. I think I should be entitled to my benefits until I die or get better. I hope you will try to see that Social Security never treats me or anyone else like this again. Thank you.

[An attachment to the statement follows:]

DEPARTMENT OF HEALTH AND HUMAN SERVICES,
SOCIAL SECURITY ADMINISTRATION,
OFFICE OF HEARINGS AND APPEALS.

Name and Address of Claimant:
Joaquin de La Fuente, 8841 Fountainbleau Boulevard,
Miami, FL.

NOTICE OF FAVORABLE DECISION, PLEASE READ CAREFULLY

The enclosed decision is favorable to you, either wholly or partly. If you are satisfied with the decision, there is no need for you to contact the hearing office or the Social Security office. You will be notified as soon as action on the decision has been completed.

If you disagree with the decision, you have the right to request the Appeals Council to review it within 60 days from the date of receipt of the notice of this decision. It will be presumed that this notice is received within 5 days after the date shown below, unless a reasonable showing is made otherwise. You (or your representative) may file a request for review at your local Social Security office or at the hearing office, or you may write to these offices indicating your intent to request review. You may also mail the request for review directly to the Appeals Council, Office of Hearings and Appeals, SSA, P.O. Box 2518, Washington, D.C. 20013.

The Appeals Council may, on its own motion, within 60 days from the date shown below, review the decision, which could possibly result in a change in the decision (20 CFR 404.969 and 416.1469). After the 60-day period, The Appeals Council generally may only reopen and revise the decision on the basis of new and material evidence, or if a clerical error has been made as to the amount of the benefits or where there is an error as to the decision on the face of the evidence on which it is based (20 CFR 404.988 and 416.1488; 42 CFR 405.750 and 405.1570). If the Appeals Council decides to review the enclosed decision on its own motion or to reopen and revise it, you will be notified accordingly.

Unless you timely request review by the Appeals Council or the Council reviews the decision on its own initiative, you may not obtain a court review of your case (section 205(g), 1631(c)(3), or 1869(b) or the Social Security Act).

This notice and enclosed copy of decision mailed November 10, 1983.

DECISION OF HARRY J. FARBMAN, ADMINISTRATIVE LAW JUDGE

This case is before the undersigned upon a request for hearing filed on April 15, 1983 by the claimant, Joaquin De La Fuente, upon disagreement with reconsidered determinations of the Social Security Administration ceasing disability insurance benefits under Sections 216(i) and 223, respectively, of the Social Security Act, as amended.

After due notice, hearing was held in Miami, Florida on October 3, 1983, the claimant appearing and participating together with Jack De La Fuente, his son, as witness. He was represented by Paulette Ettachild, an attorney associated with Legal Services Of Great Miami.

The claimant, born in Cuba on January 17, 1929, completed high school and worked as an office manager, bookkeeper, and accountant. He emigrated to the United States in 1962 and worked thereafter as a truck driver, plastics factory worker, and bookkeeper. Based upon an application filed on May 21, 1975, the initial determination established disability benefits commencing May 20, 1975, due to

polycythemia vera with vertigo, enlarged liver, and enlarged spleen. Reconsidered notice dated February 14, 1983 advised the claimant it had been determined his condition was not disabling as February 1983, with benefits thereby terminating the close of April 1983. The claimant lives with his unemployed wife and their employed son.

ISSUES

The issue to be determined is whether the claimant's entitlement to a period of disability under section 216(i) and to disability insurance benefits under 223(a) of the Social Security Act, as amended, has ended. The specific issues are whether the claimant's disability has ceased, and if so, when.

Section 404.1594(b) of Regulations No. 4 provides that an individual's disability shall be found to have ceased in the earliest of the following months: (1) the month in which impairment, as shown by current medical or other evidence, is such that the individual is able to do substantial gainful activity; or (2) the month in which the individual has demonstrated his ability to engage in substantial gainful activity (following completion of a trial work period); or (3) the month in which the individual actually performs substantial gainful activity (where the individual is not entitled to a trial work period).

APPLICABLE REGULATIONS AND EVALUATION OF THE EVIDENCE

Pursuant to the Act, the Secretary has established Social Security Administration Regulations No. 4. The regulations provide steps for evaluating disability (20 CFR 404.1520(a)). A set order is followed to determine whether an individual's impairment(s) continues to be disabling. If it is determined that a claimant is or is not disabled at any point in the review, further review is not necessary.

In reviewing the record to determine whether an individual's disability continues, Social Security Administration Regulation No. 4 requires the Administrative Law Judge to consider the following in sequence:

1. An individual who is working (and has completed a trial work period or was not entitled to a trial work period) and engaging in substantial gainful activity will not be found to be "disabled" regardless of medical findings (20 CFR 404.1520(b));
2. An individual who does not have a "severe impairment" will be found to be not "disabled" (20 CFR 404.1520(c));
3. If an individual is not working and is suffering from a severe impairment which meets the duration requirement and which "meets or equals a listed impairment in Appendix 1" of Subpart P of Regulations No. 4, a finding of "disabled" will be made without consideration of vocational factors (20 CFR 404.1520(d));
4. If an individual is capable of performing work he or she has done in the past, a finding of "not disabled," must be made (20 CFR 404.1520(e));
5. If an individual's impairment is so severe as to preclude the performance of past work, other factors including age, education, past work experience and residual functional capacity must be considered to determine if other work can be performed (20 CFR 404.1520(f)).

The rules set out in Appendix 2 of Subpart P of Regulations No. 4 are considered in determining whether a claimant with exertional impairments is or is not disabled. The regulations also provide that if an individual suffers from a nonexertional impairment as well as an exertional impairment, both are considered in determining residual functional capacity (20 CFR 404.1545). If a finding of disabled cannot be made based on strength limitations alone, the rules established in Appendix 2 are used as a framework in evaluating "disability." In cases where the individual has solely a nonexertional impairment, a determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2.

The evidence of record shows that the claimant was found to be entitled to a period of disability beginning May 20, 1975 and to disability insurance benefits. However, it was determined that the disability ceased as of February 1983. (It is the policy of the Social Security Administration that the month of cessation will ordinarily be the month that the claimant is informed that the Social Security Administration plans to find that disability has ceased.) The question to be resolved is whether the claimant's impairment(s) precluded substantial gainful activity at the time disability was found to have ceased.

In applying the sequential steps outlined above, the Administrative Law Judge concludes that a decision on whether the claimant's disability has ceased cannot be made based on work activity. After considering the medical facts alone, the Administrative Law Judge further concludes that the claimant is suffering from a severe

impairment which is listed in Appendix 1, Subpart P, Regulations No. 4. Consequently, it must be found that the claimant continues to be under a disability within the meaning of the Social Security Act.

SUMMARY AND EVALUATION OF TESTIMONY AND RECORD OF EVIDENCE

Testimony indicated the claimant has neither worked nor looked for work since 1975 when he left his job as a hotel bookkeeper because of dizziness and vomiting. He underwent hospitalization in December 1981 for chest pain described as occurring daily and relieved by Nitroglycerin. Additional complaints included back pain, dizzy spells, and occasional blackouts. The dizzy spells were described as occurring upon awakening and usually followed by vomiting. The episodes had duration from three to four minutes without vomiting, and to one half-hour with vomiting. He estimated he could walk one to two blocks, stand two to three minutes, sit for several minutes, and lift five to ten pounds. He drives a car one or two times a week, usually to the drug store. Routine activities are minimal as he does no household chores. He takes an afternoon nap regularly and attends church services infrequently.

Medical evidence not previously considered includes a report by Dr. Jose Esquienazi dated August 30, 1983. He stated the claimant had been diagnosed as suffering from arteriosclerotic heart disease, coronary artery disease, old myocardial infarction with angina pectoris and cardiomegaly, congestive heart failure with ventricular arrythmias, hypertension, generalized arteriosclerosis with episodes of acute thrombophlebitis and several attacks of transient ischemic attacks, polycythemia vera rubra with erythrocytosis, thrombocytosis, and spleenomegaly, and hyperuricemia with episodes of gouty arthritis.

Symptoms included almost daily vertigo, severe anginal pain with dyspera and arrythmias on exertion. Medications included Lasix, Slow K, Nitrodur, Nitroglycerin, Digoxin, Persantine, Zylaprim, Isordil, and Procardia. (Exhibit 24) Dr. Carlos J. Dominguez, and endocrinologist associated with the University of Miami School of Medicine, reported on September 20, 1983 that he has been involved in the claimant's treatment since December 1977. The hematological diagnosis was polycythemia vera with myelofibrosis. He noted the enlarged spleen was a source of marked disability because of severe pain and danger of splenic rupture. Radioactive phosphorus intravenous therapy has been performed in February 1981. Radiation to the spleen had been done on two occasions, in January 1982 and again in May 1983, with minimal response to the therapuetic maneuvers. The claimant continued to have significant elevation of hemoglobin, hematocrit and platelet counts making him susceptible to thrombosis and bleeding episodes. There was a high risk and shortened life expectancy. In addition, he noticed severe arteriosclerotic heart disease and expressed opinion that the claimant was unable to engage in any kind of work activity. (Exhibits 24, and 26)

Record evidence documents that the claimant suffers from a severe impairment affecting mobility. It has therefore been concluded that the claimant's impairment meets the criteria described in Sections 7.09 of the Listing of Impairments. Consequently, he continues to be disabled within the meaning of the Social Security Act.

FINDINGS

After consideration of the entire record, the following findings are hereby made:

1. The claimant was found to be disabled within the meaning of the Social Security Act beginning May 20, 1975, and he has not engaged in substantial gainful activity since that date.

2. The medical evidence establishes that the claimant has severe polycythemia vera (20 CFR 404.1521).

3. The severity of the claimant's impairment meets the requirements of section 7.09, Appendix 1, Subpart P, Regulations No. 4 and has continued to preclude him from engaging in substantial gainful activity (20 CFR 404.152him).

4. The claimant's impairment continues to be disabling (20 CFR 404.1520(d)).

DECISION

It is the decision of the undersigned that the claimant, Joaquin De La Fuente, continues to be entitled to a period of disability and to disability insurance benefits under Sections 216(i) and 223, respectively, of the Social Security Act.

Chairman PICKLE. Thank you, Mr. Dela Fuente. I want to make a comment about your case, but I want to receive this next testimony first from Pearl Graydon. If you will proceed now, Ms. Graydon.

STATEMENT OF PEARL GRAYDON, MIAMI, FL

Ms. GRAYDON. My name is Pearl Graydon. I live in Miami. I used to work two jobs. I worked hard and supported myself and four kids. In 1979 I got sick, too sick to work. I started getting Social Security disability checks because my arthritis and chest pains and nerve condition keep me from working.

In April 1983 Social Security sent me a letter saying my benefits would stop because I can work. Since the day I got that letter I have had bad headaches and trouble sleeping. I went to my doctor and he's been giving me Valium.

My lawyer gave Social Security evidence that I am still sick. Included with that evidence is an x-ray report that says degenerative joint disease of both knees, unchanged since July 25, 1979. The report also talks about bone change in my hip and hands. My treating doctor gave a report saying I can't work because of rheumatoid and osteoarthritis. He says I can't lift or carry anything and can only walk a short distance. He says I can't stand. A Social Security doctor examined me. He said I have, "exertional dyspnea, chest pain, probably angina, with negative stress test; osteoarthritis of the knees, chronic lumbar, and cervical strain; multiple arthralgias; status posthysterical and umbilical hernia repair; and mild anxiety neurosis."

I had a hearing with an administrative law judge. After 10 months of waiting and living in fear, the judge said I wasn't disabled. My checks and medicare stopped in March 1984.

I have applied for welfare benefits. They gave me $56, which is not enough to pay my bills for my medication which I have to have, and it is very hard for me to go about trying to get benefits because of my sickness. I have pains quite frequently. I have to take a medication which is 500 milligrams a day, to kill the pains in my legs, my hips, and my hands. Sometimes it is very painful in my chest. I had my son sell his car this month and gave me the money to pay bills. I spent that money to take care of the bills. Now I have no money to buy food, medicine, or anything. I cannot pay my bills, and I really need the medication, because I can barely stand the pains that I have to suffer with.

I have applied for welfare and food stamps. It hurt my pride because I was always capable of working and supporting myself. Now I cannot work and it is very hard to think of the pains and agony I have to go through. I don't think I will ever be able to work again because I cannot stand. I can't lift anything. Sometimes no matter what I take, I am still in pain. It works on my nerves very bad. I hope that my testimony will help a lot of people like me. Thank you.

Chairman PICKLE. Ms. Graydon, I appreciate your statement. I regret that you are having so much difficulty making your statement, because of your voice impairment. We are not going to ask you to continue, but you have made your statement, and I appreciate that you would make it.

I think in the interests of people who are here, in case they could not hear, here is basically her situation. According to a Social Security document, you had exertional dyspnea, chest pain, probably angina with a negative stress test, osteoarthritis of the knees,

chronic lumbar and cervical strain, multiple arthralgias, status posthysterical and umbilical hernia repair and mild anxiety neurosis. Yet the Social Security Administration said you were able to work and an administrative law judge said you were able to work, and your benefits were cut off. Then you had no money. Your child, your son, sold his car, and that ran out?

Ms. GRAYDON. Yes.

Chairman PICKLE. And you had to go on welfare. You only got $56 a month on welfare. Of course, you said you couldn't pay your bills or buy your medicine with that amount.

Now, you appealed your case, but as I understand it, Social Security sent you a letter saying that you owed them $3,529.20 because you were paid benefits while waiting on the judge's decision, and they said you have got 30 days to pay for it, and the lawyer said don't worry about it, but you said you do worry about it.

Ms. GRAYDON. Yes, I do.

Chairman PICKLE. And I can understand that. That is a rather pitiful situation to be faced with. That is similar to the situation that Mr. Dela Fuente has given us. If I read correctly, Mr. Dela Fuente, you had terminal blood disease, and then your other symptoms led you to a further diagnosis. Your spleen swelled to the size of a football, and you had to have radiation treatment to shrink your spleen so it wouldn't burst. You have attacks of vertigo almost every day and you crawl to the bathroom to vomit. You blackout once or twice a month. You have congestive heart failure with severe angina. You had a stroke and heart attack and your doctor said that you had to avoid all physical activities, and yet the Social Security sent you a letter saying you would not get any benefits after March and cut your benefits. You said at that point you thought you were going to have another heart attack, and I would observe myself I don't blame you. I think I would have had another one, too.

With those kinds of symptoms, it is hard to see how you could have a statement that ruled against you. Mr. Pickett has the same situation. He couldn't work. He couldn't get any relief, and he had to go on welfare and had physical and mental difficulties. He had the whole works. Yet you have been without benefits for 1 year and 10 months.

I don't like to say that the people who ruled in your case are bad people, because they have a job to perform, and they are looking at one set of rules that say, according to our manual, if you can lift 20 pounds and if you can see and you can work some other job some other place, you ought to be able to go to work.

Now, that is just not practical. That is not the real world, and there are places where you simply can't have that kind of relief. We do want benefits to go only to those who are not able to work. We don't want those who are loafers or trying to cheat to get benefits, because they deprive people who really are disabled. In my judgment, you are disabled, and it is hard to believe that it has been ruled that they will knock you off the rolls. Yet, that is why we need these uniform rules, so that we will all be operating from the same book. Surely, then, benefits can be continued.

Ms. Ettachild, we have in our bill the question of nonacquiescence. We are saying that if a court rules that you are disabled,

that everyone at least in the circuit court, has got to abide by those rules, and it is not left to the whim of the Secretary or the ALJ.

Ms. ETTACHILD. I think that is a wonderful provision, sir.

Chairman PICKLE. We hope we can keep that provision in there. The administration is opposing that or they want to have some kind of relief to it. We say that that becomes the law unless it is appealed to the Supreme Court, and that is where it ought to go if they want to appeal it, but to say no, we are going to change it, we are going to send it back and start all over again, simply delays it and stretches it out and on and on. There is just no relief there.

It seems to us that we ought to have this legal provision in there and I hope it stays in the bill.

I am going to ask Senator Pepper if he has any questions of this panel at this point.

Mr. PEPPER. There were two thoughts that I had as you were making your able remarks, Mr. Chairman. In some of these instances administrative law judges did not grant the appeal, as in the case of Mrs. Graydon. I don't know whether it would be asking too much to provide, possibly, a second right of an appeal after a reasonable length of time. If a person, in the opinion of a doctor, doesn't improve or maybe deteriorates, becoming worse, maybe they should have access to another appeal. I would like to see us give consideration to that, because I don't see any help from what Mrs. Graydon has presented, who has already been denied the right of restoration by an administrative law judge. Unless you could get another examination on this matter, or it might be, Mr. Chairman, that once we establish these new criteria, even people who have been knocked off could maybe apply to get back on the rolls under those criteria.

Chairman PICKLE. Senator, under the bill we do not have any provision for retroactivity.

Mr. PEPPER. But it would be progressive.

Chairman PICKLE. It would be prospective. I wish we could go back even from the very beginning. I don't know that we can do that. We can hope we can, but there is no provision in the legislation at this time for that.

Mr. PEPPER. We will consider whether there is any way that proper redress might be had

Chairman PICKLE. I think that relief probably would have to come in the court because of the costs involved, but that is not settled yet.

Mr. PEPPER. Very good. The other thing that the chairman mentioned is that one of the criteria that the administration has been using is whether you could possibly get a job anywhere in the United States. Everybody knows you are not going to pick up from Miami and go to Portland, OR, if they say they are not sure, but you might be able to get job in Portland, OR. Well, now, everybody knows to move costs money, and you haven't even got money to pay your bills. Where are you going to get money to move, pay your transportation out there, if you are just assuming because they have told you you might get a job in Portland, OR? Look at how much would be involved in getting out there and getting set up. You have to get someplace to live out there. That is an utterly unrealistic criteria to be applied to you people. That is the way

they can prove her able to work. So, after we get this adopted and get some criteria that is reasonable and right, I think it will give us a better opportunity for people like you to get what you deserve, justice. We are sorry about your particular situation, and we will keep it in mind.

Chairman PICKLE. Thank you, Senator Pepper. Mr. Dela Fuente, you said you received a letter from Social Security cutting off your benefits. Did they examine you before they cut you out? Did they send you a doctor? They did not?

Mr. DELA FUENTE. They just mailed it. I got it in the mail. I thought it was some kind of information. When I read, saw this information that you are cut off, I thought God damn. I nearly had a heart attack. I fainted. I got nervous. Then I told my son, you read this to me because I think I am forgetting English. What does this mean? It means that you are not entitled any more, as of this date. You have to appeal.

Chairman PICKLE. Did you then hire a lawyer?

Mr. DELA FUENTE. No. I claimed by myself the first time. I went to see my doctor, because I got like a nervous breakdown. The first thing I have to do was go to the doctor. Then, after I calmed down a little bit, I went to the Social Security office, and I wrote the claim, and then another claim, and the last claim was with Ms. Ettachild. I had to claim by myself about two times, I think, and they always say no, you are not entitled, without looking. Then they send me to a doctor, and the doctor said that I could lift 20 pounds or this or that, all regarding my heart, but not with my blood disease.

By the way, my blood disease is more dangerous than my heart.

Chairman PICKLE. I thank you, Mr. Dela Fuente.

Mr. DELA FUENTE. You are welcome.

Chairman PICKLE. I am sorry that these kinds of cases occur. We are trying to find a better answer to handle them. I pesonally appreciate it that you could come. You have to bare your own personal experiences in public in these matters, but it is good for us to hear this in the sense that we ought to really know what happens out there in the disablity world. I thank you all for coming and testifying.

Mr. Pickett, did you have a medical examination before you were removed from the rolls?

Mr. PICKETT. No, sir. I also have a heart problem and a liver problem, too. I have to wear a nitroglycerine pad 24 hours a day, which affects my head but that is the only way I can continue living.

Chairman PICKLE. Thank you very much.

Thank you, Senator. I thank the panel very much.

Mr. PEPPER. Thank you all very much.

Chairman PICKLE. Our next panel will consist of Mr. Lyle D. Lieberman, Mr. Osmond C. Howe, and Ms. Josephine Carbonell. We will ask the committee to come to order again.

Our next panel consists of the gentleman at the witness table now, Mr. Lyle D. Lieberman, the vice president of the National Organization of Social Security Claimants Representatives, and a former administrative law judge, Mr. Osmond C. Howe, member of

the board of directors of the Florida Easter Seal Society and past president of the Dade County Easter Seal Society.

You are accompanied by Mr. Randall Rutta, policy associate of the National Easter Seal Campaign, and by Josephine Carbonell. She is not here. We will receive testimony first from Mr. Lieberman.

STATEMENT OF LYLE D. LIEBERMAN, ESQ., VICE PRESIDENT, NATIONAL ORGANIZATION OF SOCIAL SECURITY CLAIMANTS REPRESENTATIVES, AND FORMER ADMINISTRATIVE LAW JUDGE

Mr. LIEBERMAN. Thank you, Mr. Chairman, Senator Pepper. My name is Lyle D. Lieberman, and I am an attorney with offices in Miami and Fort Lauderdale, FL. The majority of my law practice is in the field of Social Security disability law. I am presently the vice president of the National Organization of Social Security Claimants Representatives [NOSSCR], which is a nationwide organization, comprising approximately 2,000 lawyers and 100 paralegals, which is dedicated to the improvement of the quality of representation for Social Security disability claimants. Besides publishing a monthly newsletter continuing the latest developments in legal and medical matters, NOSSCR also conducts two annual seminars in cities across the country, which are devoted to educating and training members in the field of Social Security law.

I have also had the privilege of serving as a U.S. administrative law judge with the Social Security Administration. I resigned in January 1980 to return to the private practice of law in this area.

At the outset, I would reiterate that in order to keep the integrity of the Social Security disability system, there is nothing improper about the conducting of continuing disability reviews. However, it has been the methodology utilized by the Secretary, particularly using standards that are more restrictive than the Social Security Act itself, that has caused the chaos in the present program.

In every Social Security district office in the country, a citizen can pick up a pamphlet entitled "If You Become Disabled." In that pamphlet we find these words, "The risk of disability hangs over all of us." In fact, about one in four steady workers can expect to be sidelined from work for at least 1 year before 65 because of a severe injury or illness. A loss of earnings due to disability can affect a family more than the retirement or even death of the breadwinner. Social Security provides basic protection against disability for most Americans and their families. Part of the Social Security taxes paid by employees, their employers, and self-employed people is used to finance the program. Social Security works when people can't, by replacing part of their lost earnings.

About 3.3 million disabled adults from all walks of life receive disability checks. They include the 47-year-old salesman with a wife and two children who had a severe heart attack, the secretary, 23, disabled more than a year from an auto accident, the mentally retarded adult son of a deceased worker who was insured under disability, and the 53-year-old widow with advanced arthritis and diabetes.

From the foregoing, it can be seen that the Social Security Administration itself has realized the importance of Social Security disability benefits, which are not a Government dole, but rather a contractural right which the Government contracts with its citizens to administer on a fair and impartial basis.

My office represents many claimants whose benefits have been terminated pursuant to the continuing disability review process. A certain number of these claimants have worked for employers who had long-term disability benefit plans with major insurance carriers such as Prudential, Metropolitan, Aetna, Union Mutual, et cetera. Most of these long-term disability carriers have a provision in their contract, wherein upon payment of benefits, the particular employee must file a claim for Social Security disability benefits. In the event that Social Security disability benefits are awarded, the long-term disability carrier will be able to reduce the amount of their payment to the extent of the payment by the Social Security disability benefit.

In conversations with supervisors of these various carriers, they are consistently amazed that the Social Security Administration could cease benefits to any individual without showing medical improvement. Indeed, they relate that no major long-term disability carrier would ever do such a thing, not only because in a competitive industry, a carrier with such a reputation would not get much business, but also because such arbitrary cessations would render the carrier liable for possible punitive damages.

The Social Security Administration, however, pays no penalty for arbitrarily, and, on many occasions, wrongfully ceasing benefits.

The present moratorium of the Secretary does not solve the problem. In the first place, the moratorium does not apply to any of the disability recipients whose cases are being reviewed under the normal review process—these may total 40 percent of all persons being reviewed. As a result, these citizens face the same arbitrary cutoffs, under the same restrictive guidelines, as those citizens being reviewed under the continuing disability review process. Second, the Secretary can turn on the faucet at any time and the sleeping giant of disability cutoffs can instantly appear upon the scene.

It is respectfully submitted that the Secretary has abdicated her responsibility to resolve this matter and Congress needs to assert its control. Indeed, it is the message from Congress, through public hearings such as this, that sets the tone for the policies which the Secretary chooses to follow.

Indeed, one of the problems in the process is that the Secretary refuses to following her own regulations in the selectivity of only those cut off in the process. For instance, the regulations require that the person's treating physician should be contacted first for medical information.

Many of my clients say that this is never done. The regulations also provide that the treating physician's reports and all of the prior medical evidence be sent to a doctor for whom the Secretary orders an independent examination. This is almost never done. The regulations also provide that if a doctor examines the claimant on behalf of the Social Security Administration, he should provide an

assessment of the ability of that person to walk, stand, lift, bend. This is almost never done.

Recently one of my clients received an adverse decision by a local administrative law judge, who quoted the following language in his decision:

> It is not necessary for the claimant's impairment to have improved for disability to be ceased. Rather, the question to be resolved is whether the claimant's impairment precluded substantial gainful activity at the time disability was found to have ceased.

After the appeals council denied the request for review in this case, we filed suit in the Federal district court. The Federal district court reversed the finding of the administrative law judge with the following language:

> This statement (above quoted) in light of *Simpson* v. *Schweiker*, 691 F.2d 966, 969 (11th Cir., 1982), the leading case in this circuit on medical improvement, is a blatant misstatement of the law. It is the conclusion of this Court that the ALJ's misapplication of the law materially affected the outcome of the Plaintiff's case.

This particular administrative law judge is a former colleague of mine. I am aware he was stunned and hurt by the words of the Federal judge. He rendered the initial decision, and I would submit he is one of the finest legal scholars presently serving in the position of administrative law judge. His ability, his character, and his integrity, in my opinion, are unexcelled, but in following the policies forced upon him by the Secretary, as to the issue of medical improvement, he has been chastised by the Federal district court. Had he adhered to the case law set forth in this circuit, he would have incurred the wrath of the Secretary. This is a classic case of being on the horns of a dilemma.

It is apparent that Congress must take action on the medical improvement standard. The reform bill recently passed by the House will go a long way toward resolving some of the major problems that have arisen. It must be pointed out that the disability trust fund, in contrast with the retirement trust fund and medicare trust fund, has been quite solvent, and has been projected to remain solvent for many years into the future. This finding was established by the President's own Commission on Social Security. In light of this factor, there should be no question that every citizen who undergoes a review to establish his continuing entitlement to social security disability benefits, is entitled to have his claim decided on a fair and impartial basis, under standards that are in accordance with the Social Security Act.

A recent editorial contained in the New York Times, April 7, 1984, traces the history of the continuing disablity review process and ends up with this final paragraph, "The issue is whether the administration should be trusted to set the rules for the review process or made to observe a minimal standard of humanity. The record leaves no doubt about the answer."

Chairman PICKLE. Mr. Lieberman, that is a very strong statement. Thank you for your testimony.

We will now be pleased to hear from Mr. Howe, and I presume for such additional statements by Mr. Rutta or Mr. Howe. Will you proceed, sir.

STATEMENT OF OSMOND C. HOWE, JR., ESQ., MEMBER, BOARD OF DIRECTORS, FLORIDA EASTER SEAL SOCIETY, ALSO ON BEHALF OF THE NATIONAL EASTER SEAL SOCIETY, AND THE EASTER SEAL SOCIETY OF DADE COUNTY, ACCOMPANIED BY RANDALL L. RUTTA

Mr. HOWE. Chairman Pickle, Senator Pepper, my name is Osmond Howe. I am pleased to represent the Easter Seal Society here this morning. I have been a member of the board of directors of the Florida Easter Seal Society for 3 years, and very active in the local society for the past 14, and immediate past president of our Easter Seal Society in Dade County. With me is Mr. Randall Rutta, of the National Easter Seal Society's Office of Governmental Affairs in Washington, DC. On behalf of the National Easter Seal Society, Florida Easter Seal Society, and the Easter Seal Society of Dade County, I appreciate the opportunity to comment on the impact of the Social Security Administration's continuing disablity reviews on the lives of Social Security Disability Income [SSDI] beneficiaries.

The National Easter Seal Society is a nonprofit organization that serves persons with disablities. Through a nationwide network of more than 800 State and local societies, Easter seals provides a wide range of comprehensive rehabilitation and related services. Easter seals serves people of every age and disability. In 1983 Easter seals provided community-based services to almost 900,000 individuals.

Locally, the Easter Seal Society of Dade County offers a broad spectrum of programs in rehabilitation, education, vocational training, and related areas. Established 42 years ago, the Dade County Easter Seal Society serves over 40,000 children and adults annually. Notably, its rehabilitation center was one of the first in the country to become certified under the new medicare program for comprehensive outpatient rehabilitation facilities. As a medicare provider, the Dade County Easter Seal Rehabilitation Center provides high quality medical services, including physical therapy, occupational therapy, speech language pathology services, and counseling. In addition, Dade County Easter Seals operates a school for children with learning disabilities and an innovative stimulation program for infants with developmental disablities.

The Easter Seal Society is concerned about the harsh impact which the Social Security Administration's [SSA's] continuing disability reviews have had on beneficiaries. We believe that the accelerated review process has resulted in the termination of essential disability benefits for many persons who were truly eligible. Moreover, we believe that a complex and overburdened appeals process prevented many of these individuals from pursuing reconsideration and reinstatement to the rolls. As a result, disabled persons who met the requirements of Social Security law and its regulations were denied legitimate financial support under the SSDI program.

Since SSDI stepped up its continuing disability reviews in March 1981, approximately 470,000 disabled workers received initial notices that their benefits were being terminated. This represents about 45 percent of all those reviewed. In addition, the number of

new awards dropped to an all-time low in calendar year 1982, with an allowance rate of only 29 percent of those applying. The allowance rate in the first half of 1983 was only slightly higher. In Florida, about 16,000 disabled individuals, or 40 percent of those beneficiaries reviewed, were initially dropped from the rolls.

Public outcry over the high number of disability benefit terminations and the severe emotional and financial consequences for those terminated has brought about some reform of the disability review system. Congressional action and partial reform efforts instituted by SSA have removed many beneficiaries from the accelerated review process.

The moratorium now in effect bans any further termination of disability benefit through October 1, 1985. Unfortunately, the moratorium merely suspends temporarialy the current SSDI investigation.

Chairman PICKLE. Mr. Howe, would you suspend for a moment. There is a person in the audience who is having some difficulty. Is a doctor on the way now?

We will suspend temporarily, Mr. Howe.

[Recess.]

Chairman PICKLE. We will proceed.

I wonder, Mr. Howe, if you would be willing to go ahead and submit the entire statement in the record and summarize the balance of your testimony in any way you see fit. I see you have a couple more pages. Let me suggest you just summarize or hit its high points, and we will proceed.

Mr. HOWE. I am glad to do that, Chairman Pickle.

As a community-based provider of direct rehabilitation services, Easter Seal Societies have had first-hand experience with the hardships caused by the SSA's hasty review efforts. Easter seal staff work closely with disabiled clients, providing personal attention and support, in addition to treatment, education, training and other rehabilitation services. As a result, rehabilitation professionals were privy to the debilitating anxiety felt by disabled workers whose disability benefits were terminated.

Easter seal staff report that the sudden loss of disability benefits represents a major crisis in the lives of disabled workers. Easter seal clients who have been dropped from the disability rolls have experienced high levels of stress and related health problems. In most cases, the emotional strain associated with the SSA review and appeal process has substantially exacerbated the client's existing physical problems. The long and grueling process of reversing a termination decision was almost always accompanied by declining health status and morale. Even those clients who successfully regained their SSDI benefits were left emotionally drained and physically worse off.

It has been our experience that SSDI recipients who are denied benefits suddenly find themselves with little or no income. Unable to work, these clients are forced to seek any available source of support, often State- or county-funded general relief. Furthermore, the lack of adequate community resources acts as a major deterrent to SSDI beneficiaries who seek to appeal the decision to terminate benefits.

For example, an Easter Seal Society recently reported a 28-year-old, mentally impaired man, who is also physically disabled and uses a wheelchair, was unceremoniously dropped from the SSDI rolls without personal contact or evaluation. His efforts to appeal the termination were stymied by the lack of transportation needed for him to appear before an ALJ. Finally, after 6 weeks without benefits, the young man was driven to his hearing. Within 10 minutes, the individual's SSDI benefits were reinstated. Other, less fortunate persons never overcome such obstacles and, as a result, unnecessarily forfeit disability benefits which they are entitled to receive.

The cases familiar to Easter seals in which SSDI recipients have been unfairly denied benefits add to overwhelming evidence of the need to thoroughly revise the continuing disability reviews. The national society does not believe that the moratorium announced by Secretary Heckler represents a final solution to the disability review problem. Ultimately, legislation is needed which will bring about needed reform within SSA's review process.

The national society is on record as strongly supportive of the Social Security Disability Reform Amendments of 1984. We believe that the recent passage of H.R. 3755 by the House represents a major victory in the pursuit of meaningful reform within the SSA's continuing disability review process.

There are several provisions within H.R. 3755 which Easter seals believes are particularly important to the well-being of disabled workers. These provisions have been reviewed this morning. They grant recipients sufficient opportunities to validate the nature of their disability.

Easter seals also supports the continuation of benefits through the ALJ level in medical cessation cases. It is our experience that many SSDI recipients lack the resources needed to appeal the loss of their benefits. Without continued benefits, these disabled individuals are simply unable to enter the existing appeals process. Your bill accomplishes this.

As a result, eligible people with severe disabilities and little means of support are deprived of benefits rightfully theirs.

The national society is encouraged by the thorough reform efforts contained in H.R. 3755. We are hopeful that similar measures will be adopted by the Senate. On behalf of the 3.8 million SSDI beneficiaries, Easter seals and other organizations representing people with disabilities will actively promote final passage of this legislation to reform SSA's continuing disability reviews.

Easter seals supports the principle of beneficiary review. Social Security Programs, including SSDI, should provide benefits only to those individuals who meet statutory and regulatory requirements. However, we believe that the review process itself should be both accurate and fair. The SSA's review of SSDI beneficiaries has been neither.

The Easter Seal Society sincerely appreciates this opportunity to share our experiences regarding the effect of the SSA's review of SSDI beneficiaries. We recognize the dedication and valuable efforts of both chairmen in attempting to alleviate the harmful effects of these reviews. Thank you for inviting us here today.

Chairman PICKLE. We thank you, Mr. Howe. I want to thank the Easter seal organization for the leadership it gives, and giving relief to the disabled people throughout America. It is extremely helpful. It is the joining of hands of private enterprise with the Government to give help to the people who need it who are at a low point in their lives. Your organization does a great service and we appreciate that. I think both of you have summarized the situation well. As you said, Mr. Howe, we need the review process, but it ought to be fair. It ought to be accurate. Mr. Lieberman has said the review has not been the difficulty, but the methodology.

Mr. LIEBERMAN. Yes.

Chairman PICKLE. The manner in which they hold the reviews and the standards which in many cases are not uniform. I think that is our difficulty. I don't like to see individuals out there working for the Government who look forward to removing somebody from the rolls so they won't get their benefits. That is just not human nature, you would think. And yet when you have 500,000 who have been removed from the rolls, you must say that either they are not working from a common book, or else they are being pressured by the system, by the administration, to remove people.

Initially when we started out to have the review process, the administration estimated that if we could remove from the rolls those who were able to work, that within 5 years' time we would remove a certain number of people, and you would probably save approximately $168 million in the process. Already they have had a savings, if you can call it that, of $1.6 billion, over 10 times what they thought, and that simply means that they have removed more than 10 times the people that they originally estimated when the Congress started the review process.

I wish we could say that we could have brought relief to these disabled people earlier, but at least we have legislation ahead of us, before us, that has been passed by the House, and is waiting action in the Senate. I don't know whether I said to you earlier this morning, but the bill that we have in the House is H.R. 3755. We passed that in early April by a vote of 410 to 1. That is a pretty good, healthy vote. That was a clear signal in my judgment to the Senate that the American people are speaking for more fairness in this program, and they wanted something done because they thought this would be reasonable and honorable. I am hoping now that the Senate can maintain that position, and that we can get some relief.

Before you came to the witness stand, I related that there was a general agreement on the Senate side that they will now consider legislation, and they will try to work out a program that they think will be satisfactory. It may not be exactly the bill that we have reference to this morning, but it will be something like that. I think the point I want to make to you is this. That the basis of the bill we have primarily before us is, one, there must be medical improvement.

If it cannot be shown that there has been medical improvement, there are still safeguards in the legislation to keep those off who are trying to duck work. It is a fair analysis, but that is the key, and that principle must not be compromised.

We have also said that benefits will be continued to the ALJ level, so that at least the individual will not be cut off from bene-

fits while his case is on appeal. We think that is the fair thing to do. That law has expired. The Congress 1½ years ago had extended that until December 1983. Now that has expired, and time is running, so we must get a new procedure on the books, even though a moratorium has been prescribed.

Mr. Lieberman, you are exactly right. The moratorium does not settle the issue. Only legislation can settle it, and I think you are both correct, that the American people are now looking to Congress to pass legislation.

I appreciate your statement, and your statement will be included in its entirety for this hearing, and the statements of those who appeared earlier will also be made a part of the record. If any individual in the audience wants to submit a statement to us, we would be pleased to receive the statement. Senator Pepper has stepped out of the room, but I want to say to all of you, I appreciate your coming this morning. We have brought this congressional hearing to Miami so that the people here in this area could understand some of the problems that many of the disabled people face, and to have a better idea about the problem and the possible solutions. That is why we have held these hearings throughout the country.

I also want to recognize in the audience here today, Mr. Leonard Batz, who represents the Senior Citizens of Dade County.

Mr. Batz, we are pleased to have you. We are glad you could be in the audience with us.

Before we conclude this hearing, I want to ask Senator Pepper if he wants to make any additional statements for the record. May I say again to you, Senator, that we certainly appreciate you inviting this congressional panel to come to Miami to hold hearings. I think we have received important testimony, and we apprciate your interest and your personal concern. Would you care to make any statement?

Mr. PEPPER. Mr. Chairman, before we conclude, Mr. Lieberman here, Judge Lieberman, has been an administrative law judge. How long were you an administrative law judge?

Mr. LIEBERMAN. I served, Senator, from 1978 to 1980. I was appointed in 1978.

Mr. PEPPER. Our Aging Committee a few years ago had a hearing in Washington where we had two administrative law judges as witnesses. One of them was from Massachusetts, and the other one, I think, from Wisconsin or Minnesota. I asked those judges, "Have you had any evidence of any attempt on the part of the Government to intimidate administrative law judges in the decisions in these cases?" And both of them said, "Well, I don't know how you would judge it. The Government seems to keep a record of the number of cases we decided, and when it became apparent that we decided the majority of our cases in favor of the appellant, the people, rumors began to get around that we have too many of these administrative law judges. We don't need as many as we have. We interpret it as an effort to insinuate that they would get rid of some of us if we didn't quit deciding so many cases in favor of the people."

Have you any comment to make on that?

Mr. LIEBERMAN. In my service, Senator, the innuendos were more at an oblique angle. It was well known that if a judge had a

higher percentage of denial decisions, he was more likely to be given one of the perks such as going to the National Judicial Conference in Reno, NV. He might also attend some other conference around the country, expenses paid, of course, by the Social Security Administration. Those judges who have what would be considered an abnormal reversal rate are individuals—I now understand the Belmon review process having all of their decisions reviewed before they are implemented. Their lawsuit has already been concluded in Washington by the Association of Administrative Law Judges against the Social Security Administration, and that is just waiting the decision of the Federal court.

Chairman PICKLE. Judge Lieberman, were any of those incentives in writing? Did you get any written word from the SSA that those kinds of awards would be given?

Mr. LIEBERMAN. Well, I did see one, Mr. Chairman, when they were considering which person should go to the National Judicial College.

The comments of the person who was making the assignments did say, "Judge So-and-So not only has a lot of decisions, but a fairly low reversal rate."

Mr. PEPPER. The reason I asked this question, Mr. Chairman, is that I was going to discuss with you whether it might be worthy of consideration to take steps to see that these administrative law judges are independent, like a judicial officer, so that they are not subject to this kind of intimidation.

Chairman PICKLE. I would like to think they are independent. I think they ought to preserve all rights under the Administrative Procedures Act, so that you do not lose your independence. I think that is the main point that we want to maintain. Would you agree with that?

Mr. LIEBERMAN. Absolutely, Mr. Chairman.

If we do not have an independent corps of administrative law judges, we can just forget about the fairness in the system.

Mr. PEPPER. Thank you, Mr. Chairman, for your coming here. We are grateful for it. This has been a fine hearing. We have gotten a lot of very valuable information. We appreciate tremendously your kindness in coming.

Chairman PICKLE. I appreciate you gentlemen coming. I say to you, and I say to all the people in America that the Congress must act. We must bring more fairness to this disability program. I believe the legislation before us will do that, and we will continue to try to produce legislation for you.

Mr. LIEBERMAN. Thank you.

Chairman PICKLE. This subcommittee will be closed. Thank you very much.

[Whereupon, at 11 a.m., the subcommittee was adjourned.]

[Submissions for the record follow:]

SAN JOSE, CA, *May 8, 1984.*

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SALMON: I feel the recent bill passed by the House by a 410 to 1 vote is a step in the right direction to correct many of the abuses of the Social Security System towards Disabled Americans. However, I feel it has not corrected all of Social Securities abuses.

(1) All persons terminated since 1981 should be re-instated with full back payments. It is my understanding that people who currently have court cases pending are not covered by this bill. It is ironic since these people are the ones who have suffered the most by the harsh actions of Social Security Reviews. Presently there are over 30,600 such cases involving over 100,000 individuals. The cost of such legal action is great to both the individual and Social Security. The costs can be eliminated by taking the above step. The question arises how Social Security Disability could pay for the re-instatement of these people? I understand that the Social Security Disability fund is in good financial shape. Furthermore, I thought that the Disability fund loaned the Old Age and Survivors fund several Billion Dollars in 1982. Has the loan been repaid the Disability fund? If not, when will it be paid back?

(2) Disabled people should be encouraged to enter the mainsteam of American life. This should be done by allowing Disabled people to participate to the most of their ability in the labor market. The present system penalizes Disabled people who try and work. The monthly allowable wages of $230.00 gross is out of date and unreasonable. The Disabled should be treated the same way as old age wage earners. The Disabled should be allowed to earn a certain amount of earnings. Any amount above that limit should be deducted dollar for dollar as the old age plan.

I hope the House and the Senate passes legislation in the very near future to correct the recent abuses of the Social Security Administration against Disabled Americans.

Thanking you for your time and consideration in this matter.

Very truly yours,

JAMES P. GRAY.

STATEMENT OF MAX SERCHUK, PRESIDENT, DADE COUNTY (FLORIDA) COUNCIL OF SENIOR CITIZENS

Mr. Chairman and committee members, my name is Max Serchuk, president of Dade County Council of Senior Citizens.

If there is one lesson that older people have learned, it is that little is ever handed to us without cost. Nothing is ever free. Those of us who remember the depression of the 1930's, remember that the many gains that have been won, were made that much sweeter because they were earned after hard fought battles.

We won, and President Franklin D. Roosevelt signed into law the "Social Security Act." We all remember his words on signing "This is but the corner stone on which to build." Our Government now had a commitment for 45 years, we were building for our Nation's needs, and then the Government forgot its commitment, and most of the institutions we helped build, were disbanded or weakened. Medicare, food stamps, housing, CETA, which helped many poor, sick, and elderly people, have been weakened. But we were told not to worry. The inflation rate is going down.

How comforting is a drop in the consumers price index when interest rates are so high that people cannot even buy cars, let alone houses. If you are elderly, how assured are we to know that although the general inflation rate is decreasing, the medical inflation rate is increasing? How assured are senior citizens to know that last year, when the general inflation rate was decreasing, the hospital inflation rate was over 79%, and prescription drug inflation was over 11.6%.

The problems brought on by our weak economy, and the failure of the President's economic policies are really just the tip of the iceberg. The part that we see is hitting us today. That which we do not see will hit us tomorrow. Both parts will shape our society for years to come. We must not be fooled into thinking that looking out for only a part of this iceberg will protect us. We must have very clear vision, and strength to see what is coming.

For example, if we look closely, we discover that the Federal Government is no longer guided by the demands of society for what it has determined is right. It is guided by the administration, which, under the pretense of "getting the Government off our backs" is cancelling its investment in people, and therefore in the country's future. I will repeat this because it is so critical for us to realize what is happening.

The administration is withdrawing the Federal Government's commitments to people. Those commitments which it has a moral and social obligation to keep.

SOCIAL SECURITY

The social security system is a social insurance system based on intergenerational support, which is a vital investment toward improving the lives of the elderly, and providing income for the disabled and survivors of deceased workers. Social security

is a social concept. Between the Government and workers based on the concept that all people have the right to dignity and income security when their earnings are lost due to old age or disability. It really makes our society a better one because without social security income, millions of people would be forced into the indignity of dependence on charity or welfare. No private investment or insurance can offer what social security offers. To maintain and strengthen the system and protect its beneficiaries is a legitimate role of the Federal Government.

The President, the Congress, the media and unfortunately many people who should know better, are running around saying "the trust funds are running out! Checks will stop next year. The cost-of-living adjustments must be reduced, and postponed! Everyone must sacrifice for the good of the economy! Well, these people need a quick lesson in the nature of social security.

They are misleading young people into believing they won't have social security to rely on when they grow old. Well, they may not if they allow themselves to be fooled.

Social security is an investment and commitment that must be strengthened.

Today's workers support today's retirees who worked hard to make today's jobs possible.

Today;s workers pay social security taxes so their parents, and grandparents can lead reasonably dignified and independent lives. And when today's young workers retire, their children and grandchildren will do the same for them. Mr. Chairman and gentlemen, the President's actions belie his words! And he is asking the elderly to bear an intolerable burden. Like the dentist who is about to yank your tooth he say "this won't hurt a bit." Well, the President must stop blaming all the Presidents that preceded him. He must wake up and recognize that he is the President, and the last months of the increasing hardship are his doing.

The Republicans must stop blaming the Democrats, and the Democrats must stop blaming the Republicans. Most of all, these leaders must stop blaming the victims of the problems, which they the leaders, have perpetuated.

Stop blaming the elderly for the cost of medicare!

Stop blaming the poor for the cost of food stamps!

Stop blaming social security recipients for the size of the Federal deficit.

Just as workers make regular payroll contributions into the disability insurance program, in order to have some financial protection for themselves and their families in the event they become ill or injured and unable to work, so also do they have a contract with their Government.

However, we are all hoping that the bill before Congress for disability reform will be passed under the guise of a well intend review process, started years ago to rid the program of cheaters. The Social Security Administration is cutting benefits off for thousands of disabled persons.

Since March of 1981 over 470,000 persons have been notified that they would lose their disability benefits. No notice was taken of the fact that many were physically or mentally unable of holding jobs, and depend on their monthly payments for their everyday needs. Many, however, won back their payments after appeals, which are lengthy, and meanwhile the disabled person is deprived of many needy things for his day-to-day living.

To cite you one case that I am familiar with, Mr. A. lives in our bldg., a subsidized housing project. He was receiving disability benefits. After he was in the building a couple of months, he wanted to help us so he took 4 hr shifts as a security guard. He wanted to do it voluntarily, but HUD rules insist we pay our guards who are all tenants.

After receiving 2 checks for 10 hrs work that month (about $30) he was notified that his disability check would be stopped, and it was. It meant that if he is able to sit on a chair and watch people sign in and out the building, he is penalized. This man is over 60 yrs of age.

This is not wiping out cheaters. The real cheaters are those who break their commitment to the people.

Start doing something about the problems which hurt these people! And until the problems cease, help the victims which the problems create. The Government's responsibility, commitment, and a sense of what investment to make do not just happen. They result from a mandate from society. What is society?

We are society. Society is people—U.S.—our families, our neighbors, we must remind our elected representatives that the basic needs of the senior citizens do not vary with a change of President or of economic conditions. We stand with those who want an old age of comfort and security and for those who are now in the work force. Thank you.

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